United States Court of Appeals for the Second Circuit



APPENDIX



IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 75-6011

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

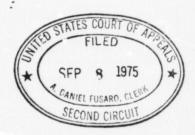
HEALTHCO, INC.,

Defendant-Appellee

ON CROSS-APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

VOLUME I



PAGINATION AS IN ORIGINAL COPY

INDEX

Docket entries		1a
Affidavit of David A. Ellis, dated May 13, 1970		5a
Transcript of Proceedings held before the Honorable Inzer B. Wyatt, at New York, New York, on October 15-November 9, 1973		28a
Opinion dated December 18, 1973 denying plaintiff's motion to strike certain trial exhibits		775a
Opinion dated December 18, 1973 denying defendant's motion to strike certain trial exhibits		781a
Opinion dated January 14, 1975		789a
Government's proposed final judgment		827a
Transcript of Proceedings held before Honorable Inzer B. Wyatt, at New York, New York on April 1, 1975 .		833a
Two affidavits of Irwin Kalik, dated April 2, 1975		856a
Afridavit of Ludwig Walter, dated March 19, 1975		866a
Affidavit of Howard Krochmal, dated March 20, 1975		868a
Affidavit of James V. DeMarco, dated April 1, 1975		869a
Transcript of Proceedings held before Honorable Inzer B. Waytt at New York, New York on April 3, 1975		
Final Judgment dated April 3, 1975	':	896a

UNITED STATES DISTRICT COURT

JUDGE WYATT
JUDGE PALMIERE
70 CIV. 1312

rirt	E OF CASE		-		ATTORNEYS	
U.S.A.			For	plaintiff:		
			NORMAN	H. SEIDLER		
VS			Atty.	DEPT OF JUST	ICE	
- HEALEGARE GORP.	Amonded 6/9/72		NYC N	Y 10007	Room 3630	
	Amended 0/0//3		110,1	10001		
HEALTHCO, INC.			:-			
						34.
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11						5-12* 1-12
			For o	defendant:		X
No. of the second secon	•			-DEBEVOISE, PI		
			Olwine	Connelly Cha	se O'Donn	ell & Wey
			299 Pa	rk Avenue, NYC	: 10017 -	688 0400
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STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	1. N. W. W.
J.S. 5 mailed x	Clerk			43.		
•						2. 18
J.S. 6 mailed	Marshal					
Basis of Action:	Docket fee					
Antitrust Suit	777					1
	Witness fees		-			1 2 2
Action arose at:	Depositions	+				1 55
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	to 10 d					1

JUDGE WYATT

	PAGE 1	
DATE	PROCEEDINGS	Date Order or Judgment Note
Apr. 2-70	Filed complaint issued summons.	
Apr.2-70	Filed notice of assignment	
Apr.20-70		
Apr. 20-70		
Apr.20-70		
tpr.21,70	4-7-70	
ipr.28-70	Filed stipulation and order extending defendant's time to answer, etc. to 5/11/70. So ordered. Palmieri, J.	
May 11,70	Filed deft ANSWER to complaint.	DPL&G
May 18-70	Filed Defendant's Memorandum in opposition to motion for pre.inj.	
May 18-70	Filed Affidavit of David A. Ellis.	
May 18-70	Filed Affidavit of Michael Cyker.	,
15y 10-70	Filed Affidavit of Albert R. Singer.	
My 19-10	Filed Supplemental Affidavit in support of pltf's motion for pre.inj.	
DI 10-70	Filed stipulation and order withdrawing pltf's motion for pre, inj, etc. So	
Aug 11,70	ordered. Palmieri, J. Filed stip and order that time for deft to Answer pltff's interrogs. be extended to 9-30-70 Palmieri J.	
Aug.19-70		
ct 23,70	Filed Answers of deft to pltff's interrogs.	
eb 10-71	Filed pltffs supplemental interrogs to be answered by deft	
pr 16-71	Filed defts answer to supplemental interrogs.	
	I Filed deft's affidavit & notice of motion ret. 5-13-71 before,	
	Palmieri, J. to merge into certain dental supply co.	
lay 14-71	Filed memo endorsed on motion file d 5-3-71 Motion granted after argument, Order	
7 . 1	to be submitted on notice in accordance with the Court's instructions-Palmier	i,J
May 12-71	Filed pltff's memorandum in opposition to deft's motion for amendment of stip.	-
	Filed Order that deft may effect mergers into itself of Hebard-Metro Dental Supply Co. Power Pertal Supply Co. of NY & Sachter Pertal Supply	
- 2.7	Hebard Dental Supply Co., Rower Dental Supply Co. of NY & Sechter Dental Suppl provided that it shall not make any changes in operations presently conducted	
240	the namesof such companies etc. & further provided that sai d mergers shall be	1.11
the state	without prejudice to application of any final order of divestiture etc. & exce	bt
m 16-71	as provided above, the stip of 7-16-70 shall continue in full force & effect-P Filed Transcript of record of proceedings, dated - 1 /6-7/	almieri,J
7-23-7	Filed Transcript of record of proceedings, deted 5-13-71	
oct.1-71	Filed pltff's notice to take deposition of Tri-Boro Dental Supply C	b
1/7/	on 10-26-71. Iss.Subp.	
Oct.1-7	1 Filed pltff's notice to take deposition of Commonwealth Dental Sup Co.on 10-26-71, Issued subp.	ply,
ct.1-71	Filed pltff's notice to take deposition of Dental Equipment Special on 10-26-71. Issued subp.	sts,
ah 16-7	Filed pltff's supplemental interrogs to be answered by deft.	
	Filed pltff's notice to take deposition of deft. on 3-6-72.	
	Filed stip & order that time of deft. to answer pltff's supplementa	1
	interrogs is ext. from 3-16-72 to 4-6-72 pre-trial examination of	<u> </u>
	deft. Healthco, Inc. is ext. from 2-15-72 to 4-6-72, so ordered.	
10	Palmieri, I.	
D. 1-72	Filed stip & order that pre-trial deposition of deft. dated 2-15-72 is adj, to 4-20-72. So ordered. Motley, J.	
pr. 21-7	Filed deft's answers to supplemental interrogs.	
ov 13-72	Filed defts atty's notice of change of address.	
W. 18-43	ettal Objections to documentary requests b. Jerry substantant error	/
7	Centurues	
- Constitution of the Cons	The same of the sa	1

	PROCEEDINGS							
Jan 5-73	Filed stip % order that John J. Galgay, Esq. a member of the firm of Blackman & Lefrak be substituted as atty's of record in this action by Debevoise, Plimp							
Jan 8-73	Lyons, & Gates. So Ordered Wyatt J. Filed Pltffs request for admission							
	Filed stip & order that the time for the deft. to answer pltffs. request for							
	admissions is extended to 2/15/73. So Ordered Wyatt J.							
Feb 15-73	Filed defts' answers to pltffs request for admissions.							
Feb 20-73	Filed deft Healthcare Corp's notice to take deposition of Walter Dental Supply, on 3/1/73							
Apr 5.73	Filed Supplemental Interrogs, by Pltff.							
Jun 8.73 Jun 7.73	Filed Stip & Order that the title be change to USA vs. Healthco. Inc. Wyatt J.							
Aug-10-73								
Aug-10-73	Filed Stip & Order that Messrs Olwine Connelly Chase, O'Donnell & Weyher be substituted in place of Messrs Blackman Lefrak Myeerson & Feld. Wyatt J.							
Aug-9-73								
Aug-9-73	Filed Deft. Healthico Inc. Notice of Deposition of United Corp. on 8/22/73. Filed Deft. Healthico Inc. Notice of Deposition of Joseph Wolking Dental							
	Economist, Petroleum Publishing Co.							
Aug-13-73	Filed Deft. Notice of Deposition of By Rite Dental Supply Co., Applied Health							
	Services, Arista Surgical Co., Henry Schein Inc. Blank Drug Corp., Dental							
£ "	Wholesales Inc., Belvac Medical & Dental Products, Inc., Darby Dental Supply							
Co	., Interstate Drug Exchange, Savon Dental Supplies, Inc., Wolins Pharmaceutical							
A 20 72	Co.							
Aug-22-73	Filed Deft. Notice of Motion. Re: Compel Compliance with subpoena addressed to Henry Schein Inc.							
Aug-20-73								
Aug-23-73	Filed Objections to documentary requests by Jerry Schein Inc. Filed Stip & Order that Healthco's motion now ret. 8/21/73 be withdrawn without							
	costs to either Healthco or Shein. Wyatt J.							
Sep-20-73	Filed Pltffs. Pre Trial Order. Wyatt J.							
Oct. 9-73	Filed pltff's notice of addtl exhibits.							
Oct.11-73	Filed deft's objections to pltff's offer of addt'l exhibits.							
	711 1 1 (.1							
Oct.11-73	Filed deft's trial memorandum.							
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DA	TE	PROCEEDINGS	Date On Judgment
Jun	13.74	Filed letter to Judge Wyatt from Winston & Steawn dated 4/23/74. Re: Concerning Supreme Court Decision.	
Jun	13.74		
6/	27/20	Filed transcript of record of proceedings, dated SCT 15,16,18, 25, 26, 29 Nov 19 1	223
Jan 1	4.75	Filed Opinion #41730. Ordered The effect of the 4 challenged acquisitions by Heal	
		will not substantially lessen competition in the sundries submarket of the	
		deutal products industry but will substantilly lessen competition in the	
		equipment submarket of that industry. The 4 acquistions are thus in violation	
		of section 7 of the Act. Settle judgment on notice. So Ordered Wyatt J.	
Apr.	3-75	(mailed notice) Filed affdyt of I.Kalik executive vice-president of Healthco Dental Supply Div.	
-		Filed affdyt of H. Krochmal Vice Pres. of Durable Dental Equipment Corp.	
Apr.		Filed affdyt of L. Walter Executive Vice Pres. of Walter Dental Supply Inc.	
Apr.		Filed affdyt of J.V. DeMarco Atty with Winston & Strawn in Mash. D. C.	
Apr.		Filed affdyt of I. Kalik Exec. Vice Pres. of Healthco Dental Supply Div.	
Apr.	4-75	Filed FINAL JUDGMENT-Deft. is ordered and directed within 12 months from the date	
,		of entry of this Final Judgment to divest itself of the Dental Equipment Corp.	
-		to be established pursuant to Sec. V of this Final Judgment. Within 120 days	
		deft. to establish & sell a Dental Equipment Corp indicated. Deft. is enjoined	
1-		for 5 years. Within 90 days of entry of this Final Judgment and for every 2	
		mos. deft. shall written reports with the pltff. setting forth steps taken to comply with Sec. IV and V of this Final JudgmentWyatt, JJudgment Entered	
!		-Clerk. (case closed statistically)	
Apr	8.75	Filed Pltffs. Notice of Motion for an order pursuant to Rule 62(a) staying the	
1	30.15	execution of the Final Judgment until 6/2/75. ret.4/18/75.	
Apr	8.75	Filed Pltffs. Memorandum of Law.	
Apr	17.75	Filed Defts, Opposition & Memorandum to pltffs, motion to Stay the Execution of the Final Judgment & For Further Relief.	
Apr	21.75	Filed Order that the effective date of the Final Judgment is STAYED until6/2/73;	
		Deft. is enjoined as indicated during the period of the Stay. Etc. Pltff, is	
		granted leave to apply for an extension of time of the operative provisions	
• /		of this Order in the event it files an notice of appeal from the Final	
•		Judgment. Wyatt J. (mailed notice)	
-	23.75	Filed Defts. Notice of Appeal from Final Judgment dtd. 4/3/75. (mailed notice)	
4-2	3-15	Filed Transcript of record of proceedings, dated 4-3-15	
		Filed Transcript of record of proceedings, dated - 4-18- 75	- ;
		Filed Transcript of proceeding dtd. 4/1/75.	-
		Filed Pltffs. Pltffs. Notice of Motion for order of final judgment. ret. 5/30/75 Filed Pltffs. Memorandum of Law.	•
	19.75	Filed Notice of Certification of Record on Appeal, in the U.S.C.A.	
May 3		Filed pltff's notice of appeal from order of final judgment (mailed notice)	
	2.75	Filed Order the the execution of the Final Judgment is herein is Stayed as	7
		indicated. Deft. is enjoined as indicated. Wyatt J. (mailed notice)	1 1 1
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CHITCH STATES DISTRICT COURT SOUTHERN LISTRICT OF HER YORK

- UNITED STATES OF AMERICA,

Plaintiff, :

APPIDAVIT OF DAVID A. ELLIS

-amainst-

70 Civ. 1312 (A.L.T.)

HEADTHCARS CORPORATION,

Defendant. :

DISTRICT OF COLUMBIA) US.:

DAVID A. ELLIS, having been duly sworn, depones and says:

- 1. I am and have been since 1957 Director of Statistical Services of the American Dental Trade Association ("ADTA"), located at 1140 Connecticut Avenue, N.S., Washington, D.C. Before that, from 1950 to 1957, I served as an Analytical Statistician at the United States Bureau of Labor Statistics, working in the fields of price indexes and consumer expenditure studies. My education consists of a B.A. degree in Mathematical Statistics from George Washington University, together with some graduate work. I am also a graduate of the trade association program of the Institute for Organization Management at Syracuse University.
- 2. ADTA is a trade association ands up of panufacturers and distributors of dental supplies and equipment. It is the oldest and lar est trade association in the industry with rethern located throughout the continental United States, Rassii and Canada.

- 3. One of the major objectives of ADTA is to collect and disseminate facts about the industry which will assist the respective members in making their individual business decisions. In my capacity as 11-rector of Statistical Services, I have been closely involved with ADTA's compilation and distribution of reliable industry statistics. I am responsible for ADTA's marketing reports, operating ratio studies, sales trend analyses and general accommic investigations of the dental industry from manufacturing through distribution.
 - entitled action, have carefully studied the papers submitted by the Government in support of its motion for a preliminary injunction, and have compared the position taken by the Government against the information and industry statistics available to me and which I believe to be the most complete and accurate in the industry. In my opinion, the Government has significantly understated the dollar size of the market alleged in the complaint.

The Harket Alleged In The Complaint

5. Taking the Government's definition of the relevant line of commerce, that is, "dental . . . supplies and equipment" sold "to dentists, dental laboratories, institutions (including hospitals and dental schools) and government agencies", Complaint 5% 6-7, I wish to point out that these products are sold not only by dental

end individual solicitors in direct competition with dealers. I, therefore, cannot agree with the suggestion made in the Government's Penorandum, page 7, that the line of commerce is limited to dealer sales of these products. With respect to the geographic necket alleges in the complaint. Metropolitan New York -- Complaint ? 4, the Government's definition of the area does not include the three New Jersey counties of hereis. Somersot and Middlesex, which are regularly included in the standard classification of "New York-Northeastern New Jersey" proposed by the Eureau of the Eureau of Labor Statistics. The standard classification which I have used in making my estimates includes the following counties:

Ke	w	v	2	20	10
			e.	4	•

Hew York
Bronx
Hrooklyn
Queens
Staten Island
Hassau
Suffolk
Westchester
Rockland

a

Hew Jaracy

Bergen Essex Hudson Passeic Union Morris Somerset Fiddlesex

6. The Covernment has measured sales in Ketropolitan New York based on "approximately 60 dental dealers" with total annual sales of approximately

[•] See Office of Statistical Standards, Encoutive Of ice of the President, Surery of the Budget, Frankerd Statistical Areas 44 (1967), attached hereto as harming A.

#35 million. Complaint ; 11. I believe this estimate is inaccurate for the following reasons:

First, the Government incorrectly estimates the number and type of sellers of dental supplies and equipment by limiting the market to sales by "dental dealers", and thus excluding sales by manufacturers, anil-order houses. Jobbers and individual solicitors to the same customers. Since these sources sell the same products to the same customers and compete with cental dealers as well as with one another, their sales should be included in any valid measurement of market volume.

Cocond, the Government's computations do not include sales by manufacturers, dealers and mail-order houses located outside Metropolitan New York to dentists, dental laboratories, schools, hospitals and government agencies located within the area.

Third, the Government's computations do not exclude sales by dental supply houses, jobbers and mail-order houses located within Ketropolitan New York to purchasers outside the area or abroad.

Fourth, the Covernment's computations do not include sales of "multiple-use products"—such as bendages, gauze, antiseptics and paper products—which are sold by medical supply houses, drug stores and other sources to the same purchasers for whose business dental supply companies are competing.

7. Theoretically, the volume of trade in a given market can be measured either by computing the amount of goods sold in the area, or by computing the

amount of goods purchased in the area. With respect to dental supplies and equipment; it is not practical to measure the amount sold in Metro; olitan Mew York since the total number and size of all the sellers are unknown and each buyer purchases from Several different sources. It is practical, however, to estimate the facent purchased in the area since the numbers of dentiate and dental laboratories are known approximately and purchases by dental schools and institutions can be estimated by local persons knowledgeable in the trade. I will confine my statements to the estimated purchases by dentists and dental laboratories since I am acquainted with recognized sources of data from which reliable estimates of their purchases can be made. Purchases by dentists and dental laboratories in the New York petropolitan market amount, in my orinion, to about \$60.2 million ennually.

Measuring Market Volume

A. Purchases by Dentists

8. In 1969 the American Dental Association ("ADA") published a report entitled Distribution of Dentists in the United States by State, Perion, District and County. The report revealed that in 1968 a total of 14,221 dentists were located in Metropolitan New York (see Exhibit b attached hereto):

How York		New Jerney	
New York and Bronx Brooklyn Queens Staten Island Nassau Suffolk Westenester Rockland	2,917 2,086 1,701 180 1,444 666 941 176	Bergen Lisex Hudson Fassaie Union Worris Somerset Hiddlesex	656 755 393 304 327 204 276
	11,011		3,210

9. For purposes of measuring the amount of dental supplies and equipment purchased by these dentists, the ADA figures must be modified to show the number of dentists in active practice. The U.S. Public Health Service estimated that of the 14,251 non-federal dentists located in New York State on July 1, 1968, 12,183 (or 85.485) were active. It also estimated that of the 4,297 dentists in New Jersey, 3.763 (or 88.04%) were active. See U.S. Dep't of Realth, Education & Welfare, Public Health Service, Realth Nappover Source Book, Sec. 20, Table 66 (1969), attached hereto as Exhibit C. These percentages are confirmed by ADA studies, for in its 1969 report it estimated that "of the 116,964 dentists listed [nationally] . . . 99.500 [or 85.065] were active in the profession." See Exhibit D attached hereto. Applying the U.S. Public Health Service estimates to the total number of dentists located in Matropoliton New York in 1968, there were 9,812 active dentists in the relevant New York counties (85.485 x 11,011), and 2,826 active dentists in the relevant New Jersey counties (SS.045 z 3,210), or a total of 12,238 active dentists in the area.

- 10. With respect to the collar volume of dental sumplies and equipment purchased by these dentiots, the most recent and reliable source material available is another ADA survey entitled The 1968 Survey of Bental Practice. Table 6 of that survey shows that in 1967 nonsularied dentists in New York and New Jersey had an average gross income of \$45,136 and \$43,003, respectively. See Exhibit E attached hereto. Although the survey does not particularize the expenses of New York and New Jersey dentists, it does show that in 1967 dentists in the "Middle East region" -- consisting of Delaware, Maryland Hew Jersey, Hew York, Pennsylvania, Vest Virginia and the District of Columbia -- spent 5.1% of their gross income on "dental supplies, drugs and so on (not including equipment or office supplies)." See Table 19, attached hereto as Exhibit F. The survey also shows that in 1957 the average cost of equipment purchased by dentists in the Middle East region was \$1,190. See Table 22, attached hereto as Exhibit G. Accordingly, even if we assume that the dentists in Metropolitan New York made only the average purchases for dentists in the Middle East region, the results would be as follows:
 - (a) Active dentists in the relevant New York counties spent approximately \$32,594,940 for dental supplies and equipment (5.1% of cross income of \$45,196, plus \$1,190, times the number of active dentists 9,412);
 - (b) Active dentists in the relevant New Jersey countries spent approximately \$9,560,700 for dental supplies

- and equipment (5.1% of gross income of \$43,003, plus \$1,190, times the number of active dentists 2,326);
- (c) In total, active dentists in Metropolitan New York spent approximately \$42,455,722 for dental supplies and equipment (\$32,894,940 plus \$9,560,782).

politan New York in 1967 should be increased for 1968 since dentists' expenses increased in that one year period by about 10% due to inflation and other factors. See ADA, 1968 Survey of Pental Practice, at 16 (1969). This increase is confirmed by the fact that ADTA's member-dealers reported that sales in the eastern part of the United States increased by about 12.9% in 1968 over 1967. See Exhibit H attached hereto. The figure of \$42,455,722 in 1967 should therefore be increased 10% to approximately \$46.7 million for 1968.

B. Purchases by Laboratories

- ment in 1968 by laboratories in Matropolitan New York totaled approximately \$13.5 million. This is based upon the following analysis:
- states that in 1967 nonsalaried dentists in the Middle
 East region spent 10.7% of their gross income on
 "commercial dental laboratory charges". Using this
 average figure, dentists in the relevant New York counties
 spent approximately \$4,836 for dental laboratory charges

in 1967 (345,196 x 10.7%), and dentists in the relevant New Jersey counties spent approximately 14,601 (443,003 x 10.7%). See Exhibit F. Bental laboratories, in practice, perform services only for dentists. See. e.c., 18 U.S.C. § 1821. Since there are approximately 9,412 active New York dentists and 2,826 active New Jersey dentists, total laboratory charges in 1967 in Metropolitan New York were approximately \$53,512,858 (9,412 x 44,836, plus 2,826 x 84,601).

Certified Dental Laboratories, entitled 1968 Operations Analysis of the United States Dental Laboratory Industry, shows that in 1968 dental laboratories spent 19.8% of the amount of their total billings for dental supplies and 1.1% for equipment. See Exhibit I attached hereto. I am informed by the laboratory trade association that almost the same percentage was spent during the preceding year. Based on the foregoing figures, inhoratories servicing denticts in Setropolitan New York spent an ennual total of approximately \$12,230,441 (20.9% x \$58,518,858) in 1967. If the figure is adjusted to account for the increase in sales in 1968 (see paragraph 11), dental laboratories purchased approximately \$13.5 willion in supplies and equipment during 1968.

15. In considering the validity of the total figure of approximately 313.5, I have taken into occount the number of dental laboratories located in Netropolitan New York. I have been informed that the mailing list of bentsply Intermational (which is located in York,

Pennsylvania and which is one of the world's largest manufacturers of ortificial teeth) contains the name of 1,311 dental laboratories in Metropolitan New York:

New York		Нем Јегзеу	
New York Bronx Brooklyn Queens Staten Island Nassau Suffolk Yestchester Rockland	361 107 215 122 9 93 36 57	Bergen Essex Hudson Passale Union Herris Somerset Middlesex	57 102 41 23 36 12 6
	1,011	•	300

If the total purchases of these 1,311 dental laboratories was \$13.5 million in 1968, the average annual purchase per laboratory would be \$10,237. While some laboratories are obviously larger than others, an average purchase figure of approximately \$10,300 is not unreasonable.

David A. Ellis

Sworn to before me this 13cd day of May, 1970.

Barber Trebet
Notary Public
8-14-72

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Part III

Titles and Demitions of Standard Consolidated Areas*

Can Will of area title and definition	PICO population
NEW YOR K-NOOTHEASTERN NEW JERSEY	14, 759, 428
New Y , N.Y., Standard Metropolitan Statistical	
portion, 4,064,796	10,694,632
City Standard Metropolitan Statistical Area	1,689,420
Area Poterson Clifton-Passaic Standard Metropolitan	610,737
Statistical Area	1, 186, 873
Middlesex County	433,856
Somerset County	143,913
CHICAGO, ILLNORTHWESTERN INDIANA Illinois portion, 6,220,913	6, 794, 461
Chicago Standard Metropolitan Statistical Area Indiana portion, 573,548	6,220,913
Gary-Hammond-East Chicago Standard Metro- politan Statistical Area	573,548
*As of May 1 1967	

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Region District County	Total number of dentists, 1968	Population per dentist	Number of 1969 graduates	Estimated population	Per cent population increase, 1950-1960	Per capita buying income. 1967	Per capita retail sales. 1967
United States Total Bevaria Total	213	1.703 2.242	3,394	159.270.900	18.5	\$2,697	\$1.564
Clark County	98	2,672 2,615	4 4	261,90°) 256,300 5,600	155.7 163.0 41.1	2.991 3.006 2.207	1.632 1.643 1.148
Reno District Churchill County. Douglas County. Lyon County Ormsby County	4 2 7	1,650 5,550 1,450 4,250 2,171	0 0	166,700 11,100 5,800 8,500 15,200	66.5 37.2 71.6 67.0 93.3	2.970 2.218 3.145 2.205 2.826	1.647 1.773 2.117 1.621
Washoe County	86	1,459	. 0	125,500 - 10,400	-15.3 -68.8 12.2	1.912 3.103 2,645	2,292 1,896 2,507
Pershing County	3	1,825	•	3,100	18.0	2.562	1,971

New Hampshire

			•				
United States Total How Hospohica Total	116,964	1,703 2,052	3, 174	199,220,909	10.5	\$2.697 2.655	\$1.504
Belking County	. 42	1,875 2,611 1,764 2,657	1 0	131, 100 30, 200 74, 100 28, 400	7.5 n.6 7.6 6.1	2,626 2,744 2,661 2,492	1,7h1 2,340 1,562 1,765
Carroll County	. 11	1,870 2,445 3,145 1,578	0	101.000 15.900 34,600 50,500	2.1 -0.3 3.4 1.9	2,514 2,490 2,438 2,574	1,640 2,244 1,547 1,594
Cheshire County	124 19 105	2.018 2.447 1.940	9	250,200 46,500 203,700	13.1 11.7 13.5	2,73e 2,639 2,760	1.658 1.796 1.626
Bockinghan County Strafford County	78 45 33	2,394 2,660 2,030	0	186,700 119,700 67,000	30.6 41.4 16.0	2,640 2,644 2,632	1.589 1.625 1.524

New Jersey

Beited States Total	116,964	1,703	3,394	143.220.900 7.041.500	18.5 · 25.5	\$2,697	\$1.564
CAMPEN REGION	. 735	2.027	. 13	1,489,800	38.3	2,527	1.576
Atlantic City District.	250	1,552	3	388.000	40.5	2.464	1.893
Atlantic County	. 112	1,586	1	177,600	21.5	2,427	1.850
Cape May County	. 33	1,630	2	53,800	30.8	2,393	2,355
Ocean County	. 105	1,491	0	156,600	91.2	2.451	1.773
Bridgeton District	. 85	2,195	2	186,600	19.9	2.467	1.487
Cumberland County	. 62	1,976	2	122,500	20.6	2,372	1,536
Selem County	. 23	2,787	0	64,100	18.6	2.591	1, 334
Carden District	. 400	2.288		915,200	42.2	2.684	1.492
Burlington County	. 120	2,503	2	300,900	65.2	2.622	1,168
Camden County	. 227	2.011	5	456,500	30_4	. 2.797	1.832
Cloucester County	. 53	2,977	1	157,800	47.0	2,477	1.128
EDWARK REGION	. 3,741	1.484	69	5.551.700	22.6	3.232	1.615
Morriston District	. 285	1,698	. 3	484.000	47.8	3,281	1.488
Morris County	. 227	1.533	2	348,100	59.2	3,543	1.493
Sussex County	. 23	2,282	0	63,900	43.1	2.751	1.480
Warren County	. 30	2,400	1	72,000	16.3	2,459	1,462
Breark District	. 2.541	1, 386	. 53	3,521,700	14.1	3.367	1.652
Bergen County	. 626	1.292	. 19	898,900	44.7	3,577	1.726
Essex County	. 755	1.306	14	986,400	1.9	3,634	1.641
Mudeun County	. 393	1.555		611, 300	-5.7	2.710	1.390
Passaic County	. 304	1.510	1	453,000	20.6	2.840	1.025
Union County	. 393	1.440	•	566,100	26.7	3,705	1.699
Bew Brunswick District.	. 711	1.655	. 11	1.176.800	54.8	2.893	1,493
Riddlesex County	. 278	2.006	7	557,600	63.8	2,752	1.456
Monaouth County	269	1.507	4	426,800	49.4	2.940	1.522
Somerset County	164	1,172	o	192,200	45.3	3.133	1.534

For explanation of data and sources, see Introduction

Region. District County	Total number of dentists, 1968	Population per dentist	Number of 1968 graduates	Estimated population	Per cent population increase. 1950-1950	Per capita buying income. 1967	Per capita retail sales. 1967
United States Total	116,964	1.703	3.394	199, 220, 909	18.5	\$2,697	\$1,564
New Jersey Total	4.476	1,573	82	7.0-1,500	25.5	3.000	1.611
Teenton Dintelet		1,010	2	369,200	17.6 .	2,992	1,611
Hemterdan County	. 27	2,207	0	64,000	26.6	2,897	1.460
Marrer County	. 175	1,744	2	305,200	15.9	3.014	1,033

New Mexico

Inited States Total	116,964	1,703	3, 394	199.220,900	18.5	\$2.697	\$1.564
lev Mexico Total .	342	3,099	. 11	1.059,800	39.6	2.094	1.314
Albuquerque District	169	2,370	3	400,600	60.3	2,327	1,396
Bernalillo County	156	2.000 .	3	* 324.500	80.0	2,444	1.507
Los Alamos County	. 8	1,950	0	15,600	24.4	3.096	168
Sandoval County	0		0	16,000	14:2	955	345
Torrance County	0		. 0	6,000	-10.9	1,387	1,391
Valencia County	5	7,700	0	30,500	73.9	1.753	1,105
Carlshad District	34	4,274	4	145, 300	63.7	2,278	1.305
Eridy County	15.	3,587	0	\$3,800	25.0	2.160	1.411
Las County	10	5,650	0	56,500	73.9	2, 357	1,443
Mere County	"	1, 1011	. 4	35,000	140.0	2.344	919
Clowin bintrict	16	7, 760	2	\$7,900	21.0	2,212	1.441
Curry County	. 13	2.821	1	36.700	41.0	- 2,211	1.525
Perservelt County	1	5,711	1	17,210	-1.3	2,214	1,261
Gilling District	17	5. Wi2	. 1	91,500	27.2	1,743	1.222
Me Kinley County	5	H,620	1	43, 100	35.5 .		1,375
San Juan County	13 .	4,033	0	48,400	191.4	3,010	1,231
Hot Springs District	30	4,363		130,900	18.2	1.867	1.152
Catron County	0		0	2,400	-21.5	1,956	634
Dona Ana County	20	3,740		74,800	51.5	1,922	992
Great County	4	4,850	0	19,400	-13.6	1,830	1.368
Midelgo County	1.	. 5,000	0	5,000	-2.6	1.856	1.677
Lune County	3	3,867	. 0	11,600	12.4	1.848	1,809
Sierra County	2	3,500	0	7,000	-10.8	2,055	1,076
'acorre County	0		0	10,700	5.1	1,417	1,086
Le Vegss District		5,188		41,500	-12.5	1.592	1,291
usdalupe County	0	-	•	5,500	-17.2	1.413	1,780
Quay County	*	6.500	0	13,000	-12.1	1,913	1,822
Ean Rigue! County	6	3,833	0	23,000	-11.5	1,453	874
Raton District	10	4,350	. 0	43,500	-17.5	1,371	1,108
Colleg County	6	2,133	0	12,800	-17.6	1.910	1.477
Bardier County	0		0	1,800	-37.8	1,229	- 646
mes wiy	0	-	0	5,900	-30.9	937	320
T#	3	9,000	0	18,000	-7.1	968	963
Mei :	2	2.500	•	5,000	-17.7	2,003	1.779
Roswe, Liet	23	3,239	1	74,500	37.8	2,168	1,369
Cha	50	3.175	•	63,500	42.0	2.208	1,230
De La lty	0		. 0	2,500		1.877	1.231
Linco nty	3	2,833	1	8,500	4.5	1,954	1.922
Santa Pe fistrict	35	2,231 .	•	78,100	9.5	1,731	1,245
Rio Arriba Counce	3	8,700	0	26,100	-1.2	1,192	795
Santa Fe County	32	1.625	0	52,000	17.9	2,002	1,471

New York

Waited States Total Bew York Total	116,964 14,817	1.703	3,394 254	193,220,900	18.5	\$2,697	\$1,564 1,600
ALANY REGION	635	1,902	6	1,207,900	9.6	2,936	1,362
Allany District	309	1.816	4	\$61,000	10.8	3, 137	1.521
Albeny County	201	1,467	3	294, 300	14.6	3, 305	1.760
Columbia County		2.524		. \$3,000	9.6	2,494	1,253
Greene County		2.386		33,400		2,269	1.410
Brasselaer County		2.408	1	156,500	7.5	3,225	1.224
Schoharie County	. 8	2,900		23,200	-0.4	2.115	1,262
Glens Falls District	63	1.654		104,200	7.1	2,305	1.513
Warren County		1.151		49,500	12.2	2,435	2.141
Washington County		2.735	0	54,700	2.8	2,188	944
Gloversville District	19	3,000		\$7,000	0.8	2,340	1,339
Fulton County		2.906	0	52,300	0.6	2,369	1,301
Ramilton County		4,700	ě	4,700	. 3.9	2.024	1,761

Region Bistrict County	Total number of dentists, 1968	Population er dentist	Kumbra of 1968 graduates	Estimated population	Per cent population increase. 1950-1969	Per rapita buying income. 1967	Por capita retail · sales, 1967
United States Total Bew York Total	116.964	1.703	3,394 254	199,220,530	19.5	\$2.677 3.127	\$1.564 1.609
Plattaburg District	: 25	2,300 3,436 1,444 2,032	. 1 0 1	163,300 #2,500 36,100 44,700	14.4 15.6 0.6 -0.2	2.040 2.047 2.645 1.934	1,219 1,209 1,326 1,235
Schenectarly District	. 173 . 21 . 32 . 120	1,864 2,624 3,278 1,353	. 1	322,400 55,100 104,900 162,400	-4.0 19.0 7.3	3.349 2.324 3.038 3.835	1.104 1.286 953 1.140
BUFFALO REGION	. 1.088 . 36 . 77 . 808 . 30	1,557 1,530 2,306 1,999 1,352 1,990 1,988 2,212	46 32 2 1 24 . 1	2,968,400 1,664,900 83,000 153,900 1,032,200 59,700 238,500 37,600	16.4 17.3 2.9 7.5 18.4 13.5 27.5 6.0	2.890 2.778 2.378 2.577 2.848 2.668 2.816 2.405	1,514 1,528 1,341 1,279 1,652 1,495 1,257 1,139
Clifton Springs Distric Onterio County Seneca County Yates County	t . 63 32 17	2.048 2.356 2.006 1.393	0 0 1	75,400 34,100 19,500	10.9 13.1 9.3 5.7	2,531 2,625 2,536 2,156	1,382 1,562 1,001 - 1,196
Chamme County	55	1, 905 1, 806 1, 340 1, 712	0.	194,500 104,400 16,700 71,400	17.4 11.7 6.1	2,662 2,577 2,268 2,873 2,341	1.419 1.411 1.096
Allegary County	37	2.717 2.659 2.773	0	147,440 45,260 102,600	4.H 0.4 6.8	2,163	1,116
Rochester District Livingston County Monroe County Orleans County Wayne County	544	1,380 2,362 1,228 3,233 2,904	13 0 13 0	- 832,200 42,600 668,300 30,800 75,500	19.1 9.4 20.3 14.5 18.6	3,318 2,581 3,545 2,249 2,346	1,573 1,241 1,595 1,310 1,731
Browne County. Chenango County. Tioga County.	2-11.599 170 133 20	1,091 1,869 1,692 2,375 2,665	193	12,651,200 317,800 225,000 47,500 45,300	12.5 15.6 15.1 10.5 25.3	3,260 2,800 2,973 2,327 2,435	1,876 1,368 1,429 1,468 963
Ringston District Delaware County Grange County Sullivan County	234 20 118	1.912 2.380 1.793 2.143 1.896	1 0 1	447,500 - 47,600 212,200 49,300 138,400	18.6 -2.0 20.7 11.1 28.3	2,583 2,254 2,650 2,503 2,622	1.374 1.477 1.624 2.001 1.379
Bee York District		1.056	192	11.625,600	11.9	2 307	1,691
Counties	1,444 1,701 180 176	1,273 1,011 1,167 1,512 1,181 1,520	41 41 23 39 7 2	3,138,670 2,655,760 1,459,709 1,985,009 207,900 1,017,700 889,300	-0.5 -4.0 93.3 16.7 *15.9 53.2 141.5 29.3	3, 169 2,775 3,967 3,521 2,979 3,175 2,891 4,356	2,049 1,065 2,618 1,291 1,080 1,781 1,545 1,909
Pouchkeepsie District. Dutchess County	184	1,415 1,392 1,526		213,000	32.2 28.7 56.2	2.911 2.879 3.052	1,481 1,536 1,231
SYRACUSE RZGION. Syracuse District. Cayuga County. Cortland County. Medison Lounty. Omondaya County. Omondaya County.	677 189 19 13 24	2,062 1,933 2,005 3,423 2,521 1,602 3,606	94	44,500 60,500 472,600	15.2 18.6 5.4 10.6 18.2 23.8 11.6	2,594 2,764 2,316 2,450 2,452 2,592 2,348	1,417 1,453 1,149 1,569 1,429 1,548 1,192
Ttica District Harkiner County. Oneida County. Otseyo County.	202 26	2,024 2,688 1,891 2,131	1 3	203,600 55,400	14,2 8.1 18.6 2.3	2,538 2,356 2,633 2,280	1,450 1,340 1,440 1,595
Jefferson County	5	5,040			7.4 2.7 3.2 12.5	2.149 2.227 1.865 2.143	1,585

Number of non-Federal dentists and dentist/population ratios in each State: 1968

Geographic division and State	Number of ter dentists July		Civilian population July 1, 1988 2	Rate per l' civilian pop	
	Total	Active	(thousands)	Total	Activ
United States.	105, 636	92,013	197, 571	53	4
New England	7, 158	6, 211	.11,352	63	5:
Connecticut	1, 892	1,695	2,951	6-1	5
Maine	425	348	963	-14	30
Massachusetts	3, 855	3, 314	5, 431	71	6
New Hampshire	327	291	699	47	4
Rhode Island	465	- 407	883	53	4
Vermont	194	166	424	46	3
diddle Atlantic	25, 125	21, 587	36,770	6S	5
New Jersey	1, 297	3, 783	7,020	61	5
New York	14, 25!	12, 183	18,040	79	. 6
Pennsylvania	6,377	5, 621	11,709	56	4
outh Atlantic	12,031	10, 720	29, 295	41	3
Delaware	243	22.6	525	46	4
District of Columbia	829	724	790	105	9
Florida	. 3,174	2,745	6,048	52	4
Georgia	1,399	1, 266	4, 452	31 .	2
Maryland	1,616	1,465	. 3,677	- 41	4
North Carolina	1,590	1, 423	5,005	32	2
South Carolina	.643	581	2,581	25	2
Virginia	1, 878	1,725	4, 412	43	3
West Virginia	654	561	1, 801	36	3
ast South Central	4, 5:13	4, 088	12,943	35	3
Alabama	1,142	. 1,038	3, 522	32.	2
Kentucky	1,178	1,041	3, 160	37	3
Mississippi	644	581	2, 321	28	'-2
Tennessee	1,579	1, 428	3, 940	40	. 3
351-032 0-697				••	8

INTRODUCTION

The distribution of dentists throughout the country differs markedly from the distribution of population. In one state the population per dentist is more than three times as great as in the state which is at the other extreme. Within states, too, the ratio of population to number of dentists is very uneven from section to section.

Ratios of population to dentists will nevel be equal among all counties or even among states nor should they be. There is geographical variation in needs for dental care, economic conditions and appreciation of dental health. Also, residents of a given location may obtain dental care in another place. It appears, however, that the disparity in population-dentist ratios is too great to be accounted for by these factors. Undoubtedly many dentists have chosen locations without the benefit of facts on the distribution of dentists and population. Dissemination of the type of data contained in this booklet helps to rectify the maldistribution.

Each year more than 3,000 dentists graduate, the majority of whom are faced with the problem of selecting a practice location. In addition, hundreds of dentists yearly are completing tours of duty with the armed forces, many of whom have not decided where to practice. Other dentists decide to relocate for various reasons, including population and economic changes, health and personal preference.

This booklet is intended to provide "leads" for the dentist seeking a location. The distribution of dentists is continually changing. Before deciding finally on a location, the dentist should get first-hand information from local sources on the number of dentists actually in practice, how many are about to retire, how many are specialists, and the many other factors which, in combination, will determine whether another dentist is needed.

Regions and districts within states

Each district consists of the counties listed under it, and each region consists of the districts listed under it. There are 761 districts and 111 regions. These regions and districts were developed by the U. S. Public Health Service and were published in Public Health Bulletin No. 305, entitled Health Service Areas; Estimates of Future Physician Requirements. These health service areas are similar in concept to trading areas or buying areas. They were originally developed in order to facilitate study of the distribution of hospitals.

The Bureau of Economic Research and Statistics conducted a study in three states to determine the validity of the health service areas used in this booklet. This study, which appeared in The Journal of the American Dental Association in October 1956 (pages 461-400), indicated that the arrangement of counties into districts and regions used in this booklet of superior to any other trading area system available, for the purpose of studying the distribution of dentists.

Total number of dentists, 1958

The number of dentists given for any county, district, region or state is the total number of living dentists, including retired dentists, excepting only dentists in the lederal dential services. The counts are as of late 1968, and include 1968 graduates. Of the 116,964 dentists listed, it is estimated that 99,500 were active in the profession. Approximately 96,000 practiced centistry, i.e., worked at the chair, and some 3,500 were engaged in teaching, research, administration and so forth. About 91,000 were in private practice.

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					Nor	salaried denti	515		
_	All d	entists			Net income				
Recion and state	Mean net ncome	Median nel income	Mean net income	Median net income	Standard deviation	Coefficient of variation	Standard error of mean	Mean gross income	Net as
New England	\$27.055	\$21,500	\$22,869	\$22,470	\$10,368	45.3	\$ 757	\$42,031	54.4
Connecticut	24.883	22,600	25,423	23,990	11,794	46.4	880	45,993	55.3
Maine	21,865	20,183	22,675	20,550	11,113	.49.0	1.323	38,384	59.1
Massachusetts	22,028	21,400	23.074	22,550	11,382	49.3	1.044	43,346	53.2
New Hampshire	21,663	21,000	21,788	21,000	9,325	42.8	1,211	39,874	54.6
Rhode Island	20,526	19,400	20,684	18.850	10.845	52.4	1,373	38,149	54.2
Vermont	24,804	23,000	26,130	24,500	17,329	66.3	2,626 .	43,623	59.9
Middle East Delaware	23,818	21,700	24,836	23.006	12,888	51.9	474	44,228	56.2
Dist. of Columbia	24,185	20,600	27,529	26,050	13.341	48.5	1,516	51,501	53.5
Maryland	24,395	21,400	27,354	23,983	13,862	50.7	1,100	50,092	54.6
New Jersey	23,398	20,983	23,817	22,050	12,165	51.1	1.014	(43,003)	55.4
	23,910	22.004	25,034	23,500	12,877	51.4	628	45195	55.4
New York	22,690	20,200	23,101	21,000	12,590	54.5	976	39,446	58.6
Pennsylvania West Virginia	22,234	19,050	23,611	20,900	12,395	52.5	1,319	40,004	59.0
Southeast	23,293	20,300	24,105	22,079	11,496	47.7	547	45,525	52.9
Alabama	23,174	21,000	25.020	23.000	13,650	54.6	1,379	47,721	52.4
Arkansas	20,608	19,988	20,917	20,050	8.065	38.6	768	39,050	53.6
Florida	25,353	23,900	25,849	24,000	12,317	47.6	947	51.218	50.5
	27,614	24.050	30,371	27,100	16,873	55.6	1.383	58,611	51.8
Georgia	20,784	18,400	22,703	19.967	13,771	60.7	1.252	39,302	57.8
Kentucky	22,045	20,050	23,734	21,975	10,860	45.8	928	42,327	56.1
Louisiana		19,500	19,694	19,500	8,463	43.0	910	36,841	53.5
Mississippi	19.532	23,300	26.437	25.400	11,244	42.5	833	47,307	55.5
Morth Carolina	25,144	21,050	25,409	24.050	12,305	48.4	1,218	47,941	53.0
South Carolina	24.176		23,967	20,100	13.097	54.6	1,272	43,655	54.9
Tennessee Virginia	22,643 23,351	19,990 22,500	25,398	24,983	11,312	44.5	832	45,259	56.1
Southwest	21,425	19,900	22,772	20,750	13,112	57.6	1.032	43,705	52.1
Arizona	22,818	20,100	23,866	22,700	10,657	44.7	896	47.937	54.5
New Mexico	26,856	24,500	28,457	25,200	13.482	47.4	1.550	52,261	
Oklahoma	21,035	19,700	21.377	19.988	10.661	49.9	802	41.604	51.4
Texas	22,351	20,017	23,388	20,700	14,845	63.5	1,314	43,665	53.
Central	23,918	21,043	24,548	22.019	12.595	51.3 54.3	943	44,500	55.
Minois	24,029	21,400	25.166	22,450	13,675		1.017	45,035	54.
Indiana	23,735	21,983	24.361	22.400	10,983	45.1		41,997	57.
lows	23,169	20,010	24.136	21.000	11,601	48.1	951 870	49.257	52.
Michigan	24,891	22.517	25,753	22,970	12,968	50.4		41,288	. 55.
Minnesota	22,722	21,050	22.860	22.050	10.815	47.3	813		
Missouri	23,626	21,500	24,364	22.033	12,584	51.6	1,094	41,713	58.
Ohio	23,552	20.014	24,595 .		13.956	56.7 47.4	1,004	43,095	57.
Wisconsia	22,871	21,400	23,140	21,800	10.972				
Northwest	20,857	20,000	21,629	20,150	9,085	42.0 56.3	733	39,030 41,687	55.
Colorado	21,499	19,050	22,623		9.876	46.1	1.135	38,266	55.
Idaho	20,931	19,900	21,400	19.990	13,385	57.1	936	42,827	54.
Kansas	22,216	20,650	23,423	21,800		46.3	938	31,878	56.
Mentana	17,558	15,700	18.047	16.050	8.347		757	39,236	55.
Nebraska	21,407	20.017	21.822	20.483	10.214	46.8	1.555	41,023	60
North Dakota	24,126	21.050	24,761	22,000	11.663	47.1	1,555	47,072	50
South Dakota	23,191	19,975	23,720	20,050	13,950	58.8	1,744.	35,457	55
Utah	19,072	17,979	19,564	18.030	9.039	46.2		40,240	54
Wyoming	21,378	20,200	21,987	21,050	8,129	37.0	1,114	40,240	
Far West	26,329	24,021	28,062	25,400	14,712	52.4	694	55,026	51
Alaska California	27,484	25,008	29,735	26,900	16,187	54.4	809	58,622	50
Hamasi	21,782	20,017	23,437	22,050	10,435	44.5	1,321	43,194	54
Nevada	25,275	22,000	26,549	24,000	12,151	45.8	1.841	52,795	50
Oresco	20,803	20,021	22,144	21,600	9,595	43.3	774	40,423	54
Washington	25,092	24,050	24,914	24,050	11,620	46.6	930	47,308	52
United States	23,761	21,455	24,740	22,850	12,707	. 51.4	239	46,391	53
	!.								

^{*}Statistics omitted because of relative unreliability.

to age. Nonsalaried dentists aged 40 to 44 years reported incomes substantially higher than their conferers in other age brackets. Most important, comparing the figures in Table 8 with their counterparts in 1964 shows that the increase in dental income over the period extended to dentists of all ages.

The average income in 1967 of dentists who grained after 1939 is shown in Table 9. The

mean net income figures reflect a gradual increase in earnings that peaked after 15 years in practice and then an irregular decline thereafter.

Salaried dentists

The mean net income of salaried dentists in 1967 was \$16,006, up from \$13,298 in 1964. Table 3

Table 19 - Professional expenses of nonsalaried dentists in 1967 as a percentage of total expenses and as a percentage of gross income, by region.

	Hem E	ngland	Maddi	e Last	South	east	South	mest	Cent	ral	Nort	hwest	Lac	West
Rem .	% of ex- penses	eross	et. penses	gross incom	es.	eross income	es of penses	eross income	of es	to of gross	% of	% of gross	% of	% of
Office rent and utilities Salaries (including com-	11.7	5.3	13.2	5.8	12.7	6.0	13.8	6.6	13.0	5.8	11.9	5.3	12.8	6.3
Fringe benefits (not in-	33.3	15.2	29.5	12.9	30.4	14.3	29.3	14.0	28.3.	i2.7	29.7	13.3	32.8	16.1
insurance related to	1.2	0.5	1.1	0.5	0.6	.0.3	1.1	- 0.5	1.1	0.5	1.1	0.5	1.8	0.9
dental practice Depreciation on dental and	1.5	0.7	1.9	8.0	1.5	0.7	1.5	0.7	1.6	0.7	1.8	0.8	1.8	0.9
office equipment Travel to dental meetings, society dues, journals,	5.4	2.5	5.4	2.4	5.8	2.7	6.9	3.3	5.7	2.6	5.0	2.2	5.1	2.5
Commercial dental lab	2.1	1.0	2.3	1.0	3.1	1.5	2.9	1.4	3.2	1.4	3.5	1.6	2.8	1.4
eratory charges Dental supplies, drugs, and so on (not equipment or	20.3	9.2	24.4	·	22.7	10.7	20.4	9.8	22.6	10.1	19.7	8.8	20.6	10.1
effice supplies) All other overhead (laundry, office supplies, postage, collection expense, office	11.4	5.2	11.6 (3.1	12.4	5.5	13.4	6.4	13.8	6.2	.14.6	6.5	11.2	5.5
maintenance, and so on)	13.1	6.0	10.6	4.7	10.8	5.1	10.7	5.1	10.7	4.8	12.7	5.7	11.1	5.5
lotal	100.0	45.6	0.001	43.9	100.0	47.1	100.0	47.8	100.0	44.8	100.0		100.0	49.2

Commercial dental laboratory charges increased 39.2%, from \$3,469 in 1964 to \$4,830 in 1967. Regionally, these expenses ranged from 19.7% of total expenses in the Northwest to 24.4% in the Middle East.

Expenses in relation to gross income

While expenses have been steadily rising, the data indicate a comparative stability in the relationship between costs and gross income. In the previous three surveys taken in the past ten years,

professional expenses have remained in the neighborhood of 45.0 to 45.6% of gross income. In 1967 this ratio was slightly higher. The 1967 professional expenses of self-employed dentists were 46.6% of gross income nationally (Table 18). Regionally, expenses as a percentage of gross income ranged from 43.9% in the Middle East to 49.2% in the Far West (Table 19).

The four leading expense categories totaled 36.3% of gross income. The Central region had the lowest ratio of mean salaries to gross income (12.7%) and the Far West was highest (16.1%). Mean commercial dental laboratory charges ranged from 8.8% of gross income (Northwest) to

Table 20 • Percentage distribution of nonsalaried dentists according to percentage of 1966 gross charges uncollected, by region.

uncollected	New England	Middle East	South- east	South- west	Central	North- west	Far West	United
. •	6.3	10.8	3.9	9.5	10.0	9.4	7.7	
1	18.1	32.4	17.0	13.1	23.4	15.7		8.7
2	23.8	19.9	17.3	14.6	16.7	23.6 -	16.4	22.6
,	6.9	7.0	9.9	10.9			19.0	18.6
4	3.8	3.7	5.8		12.3	8.7	9.0	9.4
	15.0	13.9		6.6	6.0	7.9	6.3	5.4
6.			15.5	21.2	14.6	13.4	18.0	15.4
•	1.2	0.7	3.1	2.9	2.5	4.7	2.4	2.1
	1.9	0.7	2.6	0.7	1.6	1.6	1.6	. 1.5
•	2.5	1.0	4.2	5.1	2.3	3.9	3.2	2.6
	0.6	0.6	0.8	0.0	0.4	0.0	0.5	
10	11.2	5.7	11.3	6.6	6.6	6.3		0.5
11-15	3.8	2.0	4.2	4.4	1.5		9.8	7.8
16.20	3.1	0.7	3.1	0.7		1.6	2.6	2.5
21-25	0.6	0.6	0.0		1.2	1.6	1.9 .	1.6
26-	1.2	0.3		1.5	0.6	0.0	1.1	0.6
	*.4	0.3	1.3	2.2	0.3	1.6	0.5	0.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Median	, 2.8	1.9	3,8	3.8	2.0	2.7	3.3	2.5

Table 21 • Percentage distribution of nonsularied dentists buying deutal equipment in 1967, according to amount spent.

			PARTIES NOT THE PARTY AND		
Ann	41 120	nt .		*	al dentisti
,	-	199			2.5
. 2	- 00	399			9.9
4	00 -	599			13.2
6	- 00	799			6.8
	00 -	999			7.8
1.0	00 -	1,199			8.7
1.2	00 -1	1.399			4.1
1.4	00 -1	1,599			4.4
1.6	00 -1	1,799			1.4
1.6	00 -	,999			1.4
2.0	00 - 2	2,999			9.4
3.0	00 -	1.999			5.9-
4.0	00-	1,99			3.6
5.0	00-	5.95.9			4.6
6.0	00 -	5.999			3.6
7.0	100-	7.999			2.1
8.4	00-1	1.999			2.7
	100-				1.2
	- 000				6.7
Total					100.0

Table 22 • Paragrage of nonsalaried dentists who purchased dental equipment in 1967, and the mean cost of equipment purchased by all nonsalaried dentists, by region.

	*	Me	an expen	ditures
Region buy	ing equipment	New	Used	Total
New England	51.1	\$1,434	\$170	\$1.604.
Middle Eas!	47.8	1,097	93	(1.190
Southeast	48.6	1,460	102	1.562
Southwest	51.1	1,474	143	1,617
Central	52.0	1,301	129	1,430
Northwest	54.7	1,129	219	1,348
For West	51.1	1,679	89	1,768
United States	50.3	1,339	118	1,457

Table 23 • Percentage of nonsalaried dentists who purchased dental equipment in 1967, and the mean cost of equipment purchased by all nonsalaried dentists, by age.

Ac+	% buying aquipmen	* Mean cost of equipment
-29	* 71.8	\$4,040
30-34	00.6	2,133
35-39	54.0	1,454
40-44	52.6	1,499
45-49	52.5	1,634
50 -54	43.6	875
5 59	40.2	864
6 -64	23.3	403
65-69	23.7	155
70-74	25.0	250
75 -	30.8	423
All oges	50.3	1,457

10.7% (Middle East and Southeast). Office rent and utilities averaged 6.0% of gross income nationally. Close behind, averaging 5.8%, were dental supplies, drugs, and so on. Regional variation in

both of these categories was less than 15% of prossincome above or below the national everage.

It is estimated that nonsularized demists paid \$385 million to commercial dental laboratories —10.4% of their total gross income of \$3.7 billion. The estimate for dental supplies and drugs is \$215 million. For "insurance related to dental practice," dentists paid about \$30 million.

Uncollected gross charges

Nonsalaried dentists were asked to record the percentage of their 1966 gross charges uncollected at the time the questionnaire was completed in May 1968. It was assumed that this figure would be a close approximation to the percentage of charges uncollectible.

The median percentage of 1966 gross charges remaining uncollected, both nationally and by region, was approximately the same as the corresponding figures reported three years earlier. As shown in Table 20, the national average was 2.5%, and the variation by region was from 1.9% (Middle East) to 3.8% (Southeast and Southwest). There was a small increase in the percentage of dentists who could not collect 10% or more of their gross receipts. The Middle East region had the most favorable collection experience in this category, while New England and the Southeast ranked highest in percent of dentists reporting uncollected receipts of 10% and more.

Purchase of equipment

Approximately half of the dentists in the survey purchased equipment in 1967. Table 21 shows the percentage distribution of dentists who purchased equipment according to the amount spent.

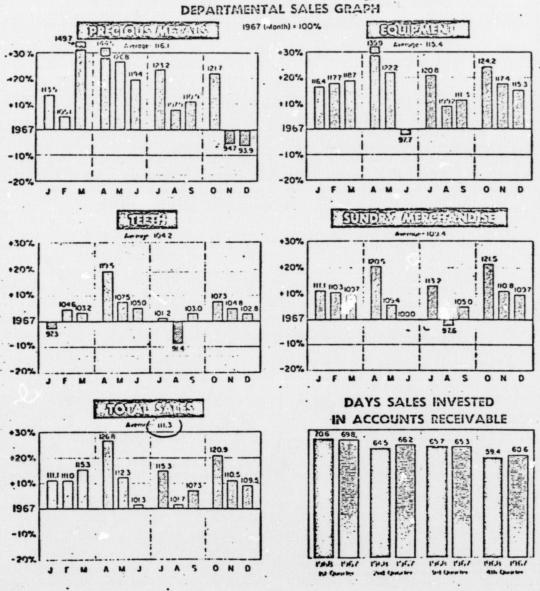
In Tables 22 and 23 the means shown are based on all dentists replying to the question, including those who did not buy equipment. The national average expenditure when all nonsalaried dentists are included was \$1,467. Nearly all equipment (92.5% on the average) was purchased new.

The mean expenditure for those who purchased equipment may be obtained by dividing the figures in the right hand columns (Tables 22 and 23) by the percent buying equipment, and moving the decimal point of the quotient two places to the right. Thus, the mean equipment expenditure for dentists buying equipment was \$2,897.

JAN - DEC 1968

Mulysis Committee QUARTERLY SALES TREND REPORT

AMERICAN DENTAL TRADE ASSOCIATION . 1140 CONNECTICUT AVENUE, N.W. . WASHINGTON, D.C. 20036



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· EASTERN

	TOTAL SALES		FRECIOUS METALS		TEETH		EQU:PMENT		SUNDRY MOSE	
					5				5	
	1767	57-59	1-57	57-59	1967	57-59	1957	57-59	1967	57-59
1	1 100	: 18	: 170	: 100	: 100	: 100	: 130	: 100	: 100	: 100
	1113	1709	1161	2039	1042	1233	1154	1669	1094	1798
	1000	1000	95	52	99	137	325	329	481	453
	1129	1556	1197	1565	1025	1168	1193	1563	1151	1751
	1000	1000	65	65	94	146	354	361	486	42,7
١		1			:					:
١	1434	1315	1116	1404	2232	1935	1979	1525	1714	2064
١	1401	1414	1434	1926	1200	1435	1627	1795	1332	1903
١	1 309	1355	1014	495	1147	443 1		2312	1072	1135
١	1299	1754	1272	1319	1135	1693	1565	1535	1176	1927
١	1257	1429	1272	1050	1094	1041 :	1554	1491	1039	1503
1	1256	1526	: 3 37	1025	1091	1491	1570	1819	1033	1539
١	1215	1611	1441	1537	1183	1495	1235	1703	1162	1603
1	1204	1254	1229	1793	1003	1175	1472	1040	1096	1509
١	1187	1577	1135	2217	1025	1005	1364	1694	1102	1641
1	1100	1554	1297	1579	923	1303	1473	1499	1074	1625
١	1152	1407	C72	1735	959	1034	1515	E450	1242	1534
١	1142	3953	1313	2537	1296	3000	991	2891-	1215	4319
١	1140	43-6	-13	1472	1151	1933	1139	5532	1111	3671
1	1110	3475	515	1912	897	1990	1132	3623	1087	3547
١	1090	1277	1097	1151	1036	1154	1095	1277	1114	1302
1	1005	2412	1356	4954	1026	1557	755	1416	1202	3300
1	1055	354	1114	1053	885	924	1300	995	840	698
1	1001	1407	1053	1416	1011	1357	925	1336	931	1516
	957	1397	1146	1256	1240	1415	933	1223	962	1416
	960	975	1003	1337	936	1127	1113	348	857	880
1	919	1018	1062	365	1071	750	739	914	979	1159
1	902	913	610	771	944	20.5	902	873	ROL	1005
	897	1150	1114	1235	1093	1595	973	872	749	1249
	871	1251	1331	356	618	702	794	1221	1056	1420
-	888	1332	1155	1223	654	1141	1610	1415	740	1345
	791	1339	1243	1576	1239	1167	452	1282	1026	1465

Due to the smaller number of reporting laboratories for the year 1968, it was necessary to restrict this comparison to three general geographical areas.

Wall of Assistance

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Key to geographical areas:

Area I-Eastern States

Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.

Area II-Central States

Arkansas, Kansas, Illinois 'owa, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin.

Area III-Western States

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming.

Table 4 shows that, as has been the case in past years, geographical location did not produce a significant difference in the items tabulated for comparison.

Cost of goods sold varied from 69.0% in the Central States to 73.7% in the Eastern States, and 75.8% in the Western States. Gross profit was correspondingly higher, quite naturally, in those states which had a lower cost of goods sold percentage. Although the Central States recorded the highest gross profit, the comparatively high Operating Expense percentage, 21.4%, dropped the combined net profit figure of these states to the lowest of the three regions.

Average Income Statement Percentages Per Laboratory 1958

TABLE 4

	Area 1	Area 2	Area 3
Net Sales	100.0%	100.0%	100.0%
Cost of Products Sold:			
Materials Used	19.8	17.6	18.0
Laboratory Salaries	41.4	42.6	48.0
Owner's Salary Allowance	5.0	3.1	5.1
Laboratory Overhead	7.5	5.7	4.7
Total Cost of Products	73.7	69.0	75.8
Gross Profit	26.3	31.0	24.2
Operating Expenses	15.0	21.4	13.5
Ret Operating Profit	11.3	8.6	10.7

Average net sales varied considerably between the three geographical areas. This is indicated in Table 5. The low was \$89,933 in the Central States and the high was \$269,930 in the Western States. The average number of technicians also varied in proportion to net sales. The Central States had the lowest average, 5.75, and the Western States had the highest, 16.82. The Central States also recorded the highest average labor cost per technician, \$8,299. Net sales increased over 1967 in all three areas, but only the Western States recorded an increase in excess of the national average of 14.9%.

Profitability Analysis-1968

TABLE S

AVERAGE TOTALS PER LABORATORY

	Area 1	Area 2 .	Area 3
Net Salés	\$132,435	\$ 89,933	\$269,930
Net Sales as Percentage of 1967	112.44%	111.20%	118.20%
Number of Technicians	10.15	5.75	16.82
Net Sales per Technician.	\$ 13,048	\$ 15,641	\$ 15,513
per Technician	\$ 6,062	\$ 8,299	\$ 7,356

Table 3, which appears below, indicates in detail the changes in dollar amounts and percentages from 1967 to 1968. Increases were experienced in sales, costs, and profits. Costs of Products Sold increased slightly more than net sales and other operating expenses advanced at a rate slightly less than that of net sales.

Contrary to the trend of previous years, the fixed costs included in both Cost of Products Sold and other Operating Expenses increased at a greater rate in 1968. This, coupled with a 16.6% increase

in laboratory labor cost resulted in a smaller rise in net profits. Despite the increased costs, the sales volume allowed for an average increase in net profits of 7.3% per laboratory.

Average sales per laboratory increased \$21,066 over 1967. Total laboratory labor cost jumped an average of \$10,833, and laboratory overhead was up \$1,164. Operating expenses advanced an average of \$3,583 per laboratory. On the profit side, gross profits increased an average of \$4,793 over 1967 and net profits increased \$1,50.

Comparative Income Statements Average Totals Per Laboratory

	1968	1967		1988 Increase Decrease*	1983 Percentage Change
Net Sales	\$162,452		\$141,386	\$21,056	14.9
Cost of Materials Used:	. ,				
Inventory, Jan. 1	\$ 5,393	\$ 4,807		556	11.7
Net Purchases	30,335	23,726		4,609	17.9
Total Available	35,728	30,12		5,175	16.9
Inventory, Dec. 31	6,403	5,565		899	16.3
Total Cost of Materials Used	\$29,327/	\$25,044		4,276	17.1
Labor Cost:	/		· .		
Laboratory Salaries	69,075	58,222		10,853	18.6
Owner's Allowance		6,863		20°	3.
Total Laboratory Labor Cost		65,085		10,833	16.6
Laboratory Overhead:	/				
Rent	2,719	2,539		180	7.1
Building Expense	600 /	527		73	13.9
Utilities	1,162	1,058		104	9.8
Depreciation	1,539 = 9%) (4	1,368		171	12.5
Repairs		563		36	6.4
Cost of Tools	257 = .270)	165		12	\$5.8
Miscellaneous Expense	3,695	3,187		508	15.9
Total Laboratory Overhead	10,571	9,40		1,164	12.4
Cost of Products Sold	115,809		99,536	16,273	16.3
Gross Profit	· 46,643		41,850	4,793	11.5
Operating Expenses:			1	•	
Other Salaries	12,529	10,893		1,636	15.0
Payroll Tax Expense	3,260	2,924		336	11.5
Misc. Office Expense		2,835		249	8.6
Misc. General Expense	5,378	4,523		855	18.9
Bad Debt Expense	208	. 81		127	156.8
Automobile Expense	. 2,380	2,290		90	3.9
Travel Expenses	2,008	- 1,718		290	16.9
Total Operating Expenses	28,897		25,314	3,583	14.2
Met Operating Profit	. 17,746		16,536	1,210	7.3

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

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-against-

: 70 Civ. 1312

HEALTH CO. INC. (Formerly known the transfer as HEALTH CARE, INC.,)

on the for the novert Defendant.

New York, New York. October 15, 1973 9:30 A.M.

the salar of thems throughout

Bcfore:

HONORABLE INZER E. WYATT, District Judge.

APPEARANCES:

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE Antitrust Division JOHN SIRIGNANO, JR., ESQ. By: MELVIN LUBLINSKI, ESQ.

EDWIN WEISS, ESQ.,

ROBERTO BONETA, ESQ.,

WINSTON & STRAWN, ESQS., Attorneys for defendant CARL A. JINKINSON, ESQ., By: JAMES V. DE MARCO, ESQ., THOMAS W. BIANCHI, ESQ.,

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as going to the weight of it.

Objection overruled.

(Plaintiff's Exhibit 2 was received

the services of Corners and the

in evidence.)

THE COURT: I am not saying, Mr. Jinkinson, I am rejecting your point, but for evidence purposes, I will take it.

MR. SIRIGNANO: We would like to call at this time, Mr. Henry Walter.

HENRY WALTER, called as a witness on behalf of plaintiff, havir been first duly sworn, was , examined and testified as follows:

THE COURT: Gentlemen, it is my policy to have everyone in the courtroom seated and silent when a witness is sworn.

DIRECT EXAMINATION

BY MR. SIRITUADO:

Supply?

- Mr. Walter, you are here pursuant to a subpoens?
- Yes, sir.
- What is your occupation?
- I am the president of Walter Dental Supply.
- Will you describe the trainers of Welter Dentel

1 - + + + - - 1 ... 3* 1000 ... 11 10 6 We are selling materials to the dental profession

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in the pursuit of their profession.

Q Will you generally describe what those materials are?

A They fall into a number of categories such as gold, teeth, equipment, sundries, parts and labor.

Q Will you name any customers other than dentists to whom you make sales?

A We sell to dental laboratories and to institutions which have a dental clinic or dental operating room.

Q Which of these customers represents the largest portion of your sales?

A Dentists. The will or respletate error

THE COURT: What is an institution that would have a dental clinic, Mr. Walter?

THE WITNESS: Veterans Administration Hospital, any hospital. It could be a health clinic.

THE COURT: Of a labor union?

THE WITNESS: Labor union.

THE COURT: I understand.

Dental Products?

Since 1946. Let Line share sea proces

product industry?

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Yes.

Will you desc the what you have done since mediam ate. That a your first entry into this business?

1946, after my discharge from the service, I combined my efforts with my father and my brother and established a dental supply company at 158th Street and Broadway, a small store.

In 1950 because of growth and additional space needed, we moved to 233 West 42nd Street, occupying two rooms on the third floor.

The business gradually grew over the years. We added rooms on the third floor until we completely occupied the third floor, part of the fourth floor and for a number of reasons, economic, business, we decided we had to make a move away from 42nd Street and moved to new locations and a new building in South Hackensack, New Jersey. This took place in the summer of July of 1970.

Will you describe the positions you held during this period from the beginning of the time you entered the business.

Because we started the business on our own, I would say I performed many of the duties that are performed in any business from sweeping the floor, wrapping packages, selling to customers and as the business grew, became the

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manager of the company with the finances and all the other managerial problems involved. The turn, hardware, items with...

Will you tell us what your duties are presently, the transfer of the result of the contract contract. as president of Walter Dental Products? to the supplied of sould be collective ortill, I believe.

I am the manager of the company. seconders care, this call, the This is white we sail

THE COURT: What do the premises look like restrict to the content to the second of the

any what is of politic that their for the

in Hackensack.

to buy?

THE WITNESS: It is a building of 24,000 square The thank the countred in the income feet, 18,000 on the ground level, approximately 6000 on the second floor. The second floor is the equipment showroom. themal or equition and you conside Downstairs are the general offices and repair department and warehousing of the merchandise items.

> THE COURT: And you occupy the whole building? THE WITNESS: We do, yes, sir. THE COURT: Do people come in off the street

THE WITNESS: No, sir.

Do dentists ever visit your premises generally? 17 1 1 2 CW 318 HJ

1. 7.55. ATE - 8. C.

- They do, at times. A
- For what purpose? Q
- Generally speaking, for the purpose of working will attive . with our equipment specialists and for looking at and possibly I'v they entroit to you have, new many date. selecting dental equipment.
 - Will you describe what dental equipment consists int ona.

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A That is what we call the hardware, Items which you would know as the chair, x-ray, the destal unit. In layman's language it would be called the drill, I believe, sterilizing materials, cabinets. This is what we call dental equipment, generally speaking.

Q Do youknow whether or not the term "dental equipment" is generally recognized in the industry?

A Yes, sir.

Q What additional categories did you mention before,
Mr. Walter?

A Sundries.

Q Will you describe what sundries are?

A In general terms, I would consider those the consumable items that a dentist uses other than gold and teeth which we are separating 25,000 for clarification, and then we have repair parts also. Sundries are generally considered the consumable items, very often the disposable items.

- Q How many employees do you have, Mr. Walter?
- A Approximately 75.
- Q How many suclets do you have, how many places of business do you have?
 - A Just one. ". You wester

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Q What is the general area in which you presently sell?

A We considered the greater New York area. It consists of the five box aghs of New York, Nassau, Suffolk County, that is Long Island, parts of Westchester County, Rockland County and the lower part of New York State up to approximately Kingston and northern New Jersey to approximately going south to close to Asbury Park.

- Q This describes your present operations?
- A Correct, sir.

MR. SIRIGNANO: I would like to have this map

more than the state of the

Your Honor, some of these items have been marked for convenience ahead of time and the order may not always exactly match the number.

THE COURT: All right.

(Plaintiff's Exhibit 5 was marked for identification.)

Q Have you seen this document before?

- A Yes.
- Q What is it?
- A It shows the trading area that we have. It shows the location of our salesmen and our service personnel
 - Q Mr. Walter, you stated previously that you had

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moved recently. When was that?

- A July 1970.
- Q Immediately prior tot hat, where were you located?

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i leasived.

- A 233 West 42nd Street, New York City.
- Q Were you located there in 1968?
- A Yes, sir.
- Q As of 1968, when your headquarters were in Manhattan, what was the geographic area which Walter Dental Supply covered?
- A Approximately the same with lesser coverage in New Jersey and lesser coverage in the upper parts of New York State, but basically the same.
- Q When you say lesser coverage, how much coverage in New Jersey did you have at that time?
 - A Northern New Jersey. Northern counties.
- THE COURT: Does coverage refer to the sending of salesmen into the area?

THE WITNESS: Yes, sir.

THE COURT: You cover an area by sending a salesman there?

THE WITNESS: Correct.

MR. SIRIGNANO: I would like to introduce

Plaintiff's Exhibit 5.

MR. JINKINSON: No objection.

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THE COURT: It will be received.

(Plaintiff's Exhibit 5 was received

in evidence.)

- Mr. Walter, are you or your company a member of any trade associations?
 - A Yes, sir.
 - What trade associations?
 - A American Dental Trade Association.
- Can you tell me what the American Dental Trade Association consists of?
- It consists of manufacturers and dealers of dental of the Paris ! products.
- Will you state whether or not within the American Dental Trade Association there is any differentiation between manufacturers and dealers?
- The organization divides itself into two parts, Class A are called the dealers. Class B, manufacturers.
- Have you held any position in the trade associa-0 tion?
 - Yes, sir.
 - What positions?
- At the moment I am first vice-chairman of the dealer section. · jane to promise

MR. SIRIGNANO: I would like to have marked

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for identification as Plaintiff's Exhibit 3, this document.

(Plaintiff's Exhibit 3 was marked for identification.)

- Q Have you ever seen this document, Mr. Walter, or anyt ling like it?
 - A Yes, sir,
 - O What is that document?
- A It is the standard manual of accounting which is used by the dealers for standardization of their accounting procedure if they so desire.
 - Q Who issues this manual?
 - A The American Dental Trade Association.
- Q I want to direct your attention to Pages 13 and 14 of the manual.
 - A Yes, sir.
- Q You will note it contains definitions of certain categories.
 - A Yes, sir.
- Q I call your attention to the definition of dental equipment.
 - A All right.
- MR. JINKINSON: I object to this question and the use of this manual for the reason it is hearsay to the

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defendant. It is not binding upon him. It is irrelevant and immaterial to the issues involved in this lawsuit.

THE COURT: Are you going to offer it in evidence, Mr. Sirignamo?

MR. SIRIGNANO: Yes.

THE COURT: Mr. Jinkinson, in line with my practice to take nearly everything in a non-jury case, I note your point and I will admit it.

Objection overruled.

(Plaintiff's Exhibit 3 was received in evidence.)

THE COURT: That is issued by what organization?

THE WITNESS: American Dentral Trade Association.

Q Mr. Walter, does your company follow the accounting procedures set forth in that manual?

MR. JINKINSON: I don't see what relevance that has to do with this lawsuit.

THE COURT: You may be right, but I will let him answer.

A Cenerally speaking, yes.

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itself.

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make a differentiation involving the durable products selling for under \$100?

A Yes, we do.

Q What is the significance of that differential?

In your accounting on dental equipment do you

A Equipment items which have a retail value of \$100 or more being identified for accounting purposes as equipment, rather than sundries.

Q Will you state how the equipment items selling for \$100 are handled?

A Generally speaking, they would be classified as sundries.

MR. SIRIGNANO: I would like to have marked for identification as Plaintiff's Exhibit 4 an analysis committee report of the American Dental Trade Association, 1968.

(Plaintiff's Exhibit 4 marked for identification.)

- Q Mr. Walter, will you examine this document?
- A Yes, sir.

Q Tell me what it is.

MR. JINKINSON: I think the document speaks for

THE COURT: He can describe it.

Q Have you seen it before?

Q What were the circumstances of your seeing it before?

A As a member of the trade association and as a reporting member to the Analysis Committee, to the accounting firm handling the statistics. We, in return, receive a finished report called Analysis Committee Report.

- Q Prom time to time are you requested by the ADTA to make reports regarding your sales?
 - A Yes, we are.
- Q On what basis are those sales reported?

 MR. JINKINSON: I object to this line of questioning. It has no relevance to the issues of this case.

 May I have a standing objection?.

THE COURT: Yes. You may be absolutely right, "r. Jinkinson, but I am going to take it for what it is worth.

A We are reporting on a quarterly and on a yearly basis.

THE COURT: Your dollar sales?
THE WITNESS: Correct, sir.

O Are any categorizations made in these reports?

NR. JINKINSON: It calls for an opinion and conclusion of the witness. The report speaks for itself.

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Walter-direct

MR. SIRIGANO: I made my question perhaps unclear.
May I withdraw that?

THE COURT: You may.

- Q Mr. Walter, when you make reports to the American Dental Trade Association with respect to sales, are any reports made with respect to the categorizations of dental products?
 - A Yes.
 - O How are those reports made?
 - A Sales are broken down in the categories I mentioned earlier in the testimony, namely, gold, teeth, equipment, sundries, parts, and labor.

THE COURT: Labor?

THE WITNESS: Labor, or service.

THE COURT: What would that be, Mr. Walter?

THE WITNESS: Repair service of dental

equipment, the labor charge for repairing dental equipment.

THE COURT: You send a person to the dentist's

office to repair the equipment?

THE WITNESS: Yes, sir.

THE COURT: In the office?

THE WITNESS: Yes, sir.

THE COURT: I understand.

Q Since 1968 will you state whether or not

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any other reports of this type have been generally sent out by the American Dental Trade Association?

- A Yes, sir.
- Q How often are they sent?
- A Once a year.

MR. SIRIGNANO: I would like at this time to introduce this document, Plaintiff's Exhibit 4.

THE COURT: You have a standing objection to this material, and over objection it will be received.

(Plaintiff's Exhibit 4 received in evidence.)

MR. SIRIGNANO: I would like to have marked for identification as Plaintiff's Exhibit No. 6 these excerpts from the American Dental Trade Association.

(Plaintiff's Exhibit 6 marked for identification.)

THE COURT: Show it to the witness.

Q Mr. Walter, in 1968 who were your principal competitors?

MR. INCINSON: If he knows.

THE WITNESS: Your Honor, I am going strictly by memory.

THE COURT: All right.

MR. SIRIGNANO: This document is an excerpt from the 1968-1969 American Dental Trade Association directory.

msq 5

Walter-direct

THE COURT: What you mean, Mr. Walter, you are not going to look at that, you are going to rely on your memory alone?

THE WITNESS: I will do whatever the Court directs me to do.

THE COURT: Can you answer it without looking at it?

THE WITNESS: I would assume I can.

THE COURT: All right, if you can, do so, and then afterwards we can let you look at it. So ahead.

THE WITNESS: In the area that we are trading in, our principal competitors were at that time S.S. WHITE, General Dental, Guterman, 'Certified, Central Dental, Hebard Metro, Hebard Dental Supply, M. A. Sechter.

L. D. Caulk, Leventhal -- at the moment this is what I can recall as the rajor competitors.

THE COURT: Do you want to now look at that piece of paper and refresh your recollection as to whether there were any more.

Caulk. I didn't exactly know what year it was, but

L. D. Caulk branches were sold to Litton Industries

and it is listed here as Litton Industries. We are

talking about the same competitor, but with a different name.

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Q Are you familiar with a company called
Dental Equipment Specialists?

A Yes, I forgot about that one.

competitors?

THE WITNESS: Yes, sir. letter and dies have

Rubenstein Dental Equipment Corp. I believe I have them all listed now.

THE COURT: Mr. Sirignano, do you want to do anything with this document?

MR. SIRIGNANO: No, your Honor.

THE COURT: We will leave it marked for identification, then.

Q Are you familiar with any other trade association in this field?

A Dental Dealers of America, referred to very often as DDA.

Q Do you know whether or not there are any members of the Dental Dealers of America who were active in 1968?

A Yes, sir.

MR. SIRIGNANO: I would like to have marked for identification as Plaintiff's Exhibit No. 23 this

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directory of the Dental Dealers of America.

(Plaintiff's Exhibit 23 marked for identification.)

THE COURT: Do you want it shown to the witness?

MR. SIRIGNANO: Yes, your Honor.

Q To the best of your recollection were there any members of the Dental Dealers of America who in 1968 were among your principal competitors?

MR. JINKINSON: If he is going to look at this book and make the decision, I object.

THE COURT: Let's do it first without looking at the book. Then look at the book.

A My major competitors at that time in our trading area but not members of the Dental Dealers of America?

Are there dental dealers who are active in the area or were in 1968 active in the area who are members of neither the Dental Dealers of America or the American Dental Trade Association?

A Yes, sir.

Q Which of those dealers were among your major competitors?

A I find it very difficult to remember exactly who belonged in 1968 to what association, if any.

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I quickly can recall one competitor by the name of
Durable Dental Supply that did not belong to the best of
my knowledge to either one organization.

- Q Is that a major competitor?
- A Today, yes. . the tally to the
- Q Was it in 1968? Limit het al.
- A No, sir. and make min proce to the contin
 - What do you consider to be a major competitor?
- A A competitor who has a number of either representatives covering the same area that we are covering or that has a dollar volume which is of importance to us from a competitive point of view.
- What dollar volume is involved in your opinion to constitute a major competitor?
- A Because of our growth and the change in the economy, I would say that the dollar volume in 1968 would have been smaller than it is today, to be considered a major competitor, but I would say somewheres in the neighborhood of \$1 million I would consider a major competitor.
- Q To what extent, if any, do the type of products carried by a company determine its position as a competitor?
 - A I'm sorry, would you repeat that question, please.

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To what extent do the type of products carried by a company enter into your determination as to whether it is a major competitor?

I believe that a major competitor, generally speaking, is one who has the majority of the classifications that I mentioned before. However, in my own estimation sundries determine more than anything else whether a competitor is of major importance ornot. I consider sundries our bread and butter items.

- Have you ever heard the expression "full line dealer"?
 - Yes, sir. A
 - What do you understand that expression to mean?

THERE IF HE HERELD

- Full line, meaning having available to the dental profession those items that the dental profession or the dental laborator, needs in the persuit of the profession.
- Have you ever heard the term full service 0 tak lunivis dealer? Yes, sir. a service ad the secretarist of the
 - A
 - Is there any difference between the two terms? Q
- It is sometimes very hard to delineate between the two. Pull service means a complete service to the profession, especially including the repair service of the

equipment.

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MR. SIRIGNANO: I would like to mark this Plaintiff's Exhibit 14, a stipulation of fact in the pretrial as to full line dealers.

(Plaintiff's Exhibit 14 marked for identification.) MR. SIRIGNANO: I would like to mark it in evidence. The same that the same that the same the same that the same th

MR. JINKINSON: Same objection.

THE COURT: Apparently these are the defendant's answers to requests for admissions and to interrogatories.

MR. SIRIGNANO: Yes, sir.

THE COURT: There is no question this is authentic? ... to a to apply I be to ask ato. ...

MR. JINKINSON: Oh, no.

THE COURT: You are objecting on the same

MR. JINKINSON: Full line dental dealers play no part in the issues of this case. I object.

THE COURT: I understand.

(Plaintiff's Exhibit 14 for identification received in evidence.)

MR. SIRIGHANO: I would like to have marked for identification and introduced at this time number 7.

THE COURT: What is this?

MR. SIRIGNANO: These are admissions with respect to the trade association made by the defendant.

(Plaintiff's Exhibit 7 marked for identification.)

MR. SIRIGNANO: I would like to have it introduced.

THE COURT: These are answers of the defendant to requests for admissions and I will admit it over objection and I will give the defendant plenty of chance to tell me why these things are irrelevant or meaningless later on.

(Plaintiff's Exhibit 7 for identification received in evidence.)

Q Mr. Walter, I would like to ask you, can you recollect in 1968 what SS White's operations in the area within which you operated were?

MR. JINKINSON: May I have that guestion read back?

(Question read.)

MR. JINKINSON: I object to that as calling for an opinion and hearsay. How this man not connected with SS White can testify as to what SS White did I don't know.

THE COURT: He was a competitor of SS White, he says. I will let him answer.

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I have no idea what their volume of business was. I do remember that they were a major competitor, and to the best of my memory had a location diagonally across the street from us at 220 West 42nd Street, one in Brooklyn, and a small branch in the Bronx, both addresses which escape me right now.

Did they have an additional outlet in New Jersey at the time? 1.10 Miles -1---

A Yes, sir, in Newark?

MR. SIRIGNANO: I would like to have marked for identification and introduced at this time Plaintiff's Exhibit 8.

(Plaintiff's Exhibit 8 marked for identification.) MR. SIRIGNANO: These are stipulations as to the acquisition of SS White.

MR. DE MARCO: May I see the exhibit, please? THE COURT: Any objection?

MR. JINKINSON: I don't have any objection to the authenticity or the correctness of the exhibit, but as I understand the government, it is irrelevant and immaterial to the issues involved in this case.

THE COURT: I will receive it.

(Plaintiff's Exhibit 8 for identification received in evidence.) - of of the Par Patt Mathemat Deviat Constant,

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marked for identification and introduced at this time
Plaintiff's Exhibit 9, a stipulation with respect
to National.

(Plaintiff's Exhibit 9 marked for identification.)

THE COURT: Has the defendant seen 9?

MR. SIRIGNANO: Yes, your Honor, they have.

THE COURT: Any objection?

MR. DE MARCO: We have not.

MR. SIRICHANO: I would like to note after being served with copies of these the defendant placed no objection to either exhibits 8 or 9.

THE COURT: Well, I take it Mr. Jinkinson is making objection now that since you are attacking White and National, it is irrelevant. If that is what the objection is, I am going to overrule it, and take it anyway.

(Plaintiff's Exhibit 9 for identification received in evidence.)

- Q Are you familiar with a company called National?
- A Yes, sir.
- Q Will you describe it, please, to the extent that you are familiar with it.
- A There were two companies by the name of National, National of New York and National Dental Company,

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which was located in New Jersey. Which one are you referring to?

- Q National of New York?
- A Yes, sir.
- Q Where was it located?
- A 220 West 42nd Street.
- Q That was close to your place of business?
- A Diagonally across the street.
- Q What products did they sell?

MR. JINKINSON: I don't understand.

"I don't know." But if he does, he will tell us.

A To the best of my knowledge they sold mostly sundries.

- Q As far as you know, did they sell any dental equipment?
 - A I don't know. I don't believe so.
- 2 Are there dental dealers, as far as you know, operating in the area in which your company competes who do not sell equipment?
- A There are companies who do not sell equipment.

 THE COURT: You mean dental dealers?

 THE WITNESS: Dental dealers who are not selling equipment.

msg 15 Walter-direct 59
Q What do these companies sell generally?
A For the greatest part, sundries.
Q These companies would not be full line dental
dealers?
A Not in my dictionary.
Q How about the dictionary of the trade?
A It is a generally accepted term.
Q And a company which does not sell equipment
would not generally be considered to be a full line
dealer?
A. No, sir.
Q Are you familiar with mail order houses?
A Yes, sir.
Q Will you state whether or not there are any
mail order houses which are full line dealers?
A Not that I know of.
THE COURT: What line is it that a mail order
house doesn't have, Mr. Walter?
THE WITNESS: There are some who have small
equipment items; there are some who can sell through the
mail, of official teeth, but they cannot sell the
complete service through the mail, and so they may have
mostly sundries and some small equipment items, but they

cannot service the profession completely.

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THE COURT: Because, for example, they could not repair equipment?

. THE WITNESS: Correct, sir.

MR. SIRIGNANO: I would like to have marked for identification and introduced at this time stipulations with respect to the acquisition of General.

(Plaintiff's Exhibit 10 marked for identification.)

THE COURT: Show it to counsel. Any objection?

MR. JINKINSON: No objection.

(Plaintiff's Exhibit 10 received in evidence.)

- Q Mr. Walter, are you familiar with General
 Dental?
 - A Yes, sir.

 MR. JINKINSON: At what time?
 - Q At the period in 1968?
 - A Yes, sir.
- Q What was your familiarity with General
 Dental based upon?

I have known him as a competitor ever since

I first entered the dental business, and I knew the then

owner, Mr. Wolinsky, and his successors, Mr. Al Singer,

and other partners. I don't know what the exact set up

was at that time.

Q In terms of competition, what products as far as

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you know was General selling that you me selling?

A Basically speaking, they were selling in the same geographical area, more or less as we were and selling full service, full line products.

Q Walter, do you have any basis on which you could judge the size, the precise size of your company relative to other dental dealers in the area?

A I don't know anyone else's figure. I only know what I have been told.

Q If you actually had figures in front of you would you be able to make a judgment?

A Certainly.

MR. SIRIGNANO: I should like the witness to be shown exhibits 8, 9 and 10. I would like you to examine this, Mr. Walter.

THE COURT: Mr. Sirignano, suppose we take a few minutes recess and Mr. Walter during the recess can have a chance to look at these.

MR. SIRIGNAMO: Thank you, sir.

THE COURT: Mr. Clerk, we will be in recess for a few minutes.

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(Recess.)

THE COURT: I suppose Mr. Walter has had a chance to look at these documents.

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What would you like to say, Mr. Sirignano?

BY MR. SIRIGNANO:

Q Mr. Walter, on the basis of the exhibits which you have just examined, the description of the sales of these companies, would you be in a position to reach a conclusion as to the relative size of the defendant following the acquisition of General relative to other dental dealers in competition with him?

MR. JINKINSON: Your Honor, I object to that question. It's calling for an opinion of the witness and it is not based on any knowledge that he has; it is based on documents. It does not call for the answer of an expert.

THE COURT: I will treat that as going to its weight. I agree with you. You have a good point. I will let him answer. Overruled.

A I find it difficult to classify or identify the direct position we were in at that time because of the other competitors that were in the market besides the ones that were laid out in front of me. I do know what our volume was at that time in 1968.

THE COURT: The ones before you are White and National and General?

THE WITNESS: Yes, White and General definitely

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were larger than we were at that time; National smaller.

Mr. Walter, to the best of your recollection in 1968, how many dealers, general dealers were active in the New York-New Jersey area who were members of chains?

A To the best of my recollection at that time there were two, namely, SS White and L. D. Caulk, or Litton, depending on the year we are talking about.

THE COURT: I take it by "chains" we mean a company which owned more than one dental dealer? Is that it?

MR. SIRIGNANO: I think in context, your Honor, a company which had dealers throughout the country or in various parts of the country.

MR. JINKINSON: It is pretty nebulous.

THE COURT: I agree. I would imagine a chain to mean anything that had more than one general dealer.

But Mr. Sirignano doesn't accept that.

I agree it is pretty vague.

o Mr. Walter, as far as you know, during the period 1968 how many dental dealers located in the New York and New Jersey area were owned by companies who operated dental dealers in other parts of the country?

MR. JYMKINSON: I object. It is irrelevant and immaterial. That is not an issue in this lawsuit, your Honor, how many outlets we had in other parts of the

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country.

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THE COURT: I will keep that in mind, but I will let him answer.

- It would be SS White and L. D. Caulk-Litton.
- Are you familiar with a company called Rower, that is, in the period 1968 and early 1969?
- I have known Rower as a supply company in Boston and then as a company also located in New York.

THE COURT: A dental dealer?

THE WITNESS: Yes, sir.

MR. SIRIGNANO: Your Honor, I don't believe there is any issue about this. Rower was a subsidiary of the defendant which actually made the acquisition in the case.

Q Will you state whether or not Rower Dental Dealerships in New England at that time.

MR. JINKINSON: Objected to as being immaterial.

THE COURT: Yes, I will keep it in mind, but I will let him answer if he can.

A To the best of my recollection I have known Rower as a supply house in Doston.

THE COURT: Did they have a place of business in New York?

THE WITNESS: I don't know the exact date of their

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MR. JINKINSON: The question was confined to

MR. SIRIGNANO: Yes, it was.

'68, was it not?

first acquisition in New York.

THE COURT: I take it actually that before 1969
Rower did not operate in the New Ydrk area?

MR. SIRIGNANO: Yes, there is no dispute about that.

THE COURT: We can go on.

Q Will you tell me, Mr. Walter, whether or not there are any advantages to a dental dealer in New York being a part of a chain?

MR. JINKINSON: I object to that as being irrelevant, immaterial and incompetent and bearing on no issues in this case.

THE COURT: You may be right. I will let him answer.

MR. JINKINSON: I don't know whether he is qualified to make that answer.

THE COURT: I agree, but we will take it for what it is worth.

A That depends on the individual. Our company
has so far decided to resist all efforts to be purchased
or absorbed. There can be some definite advantages to

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being part of a national chain.

What are those advantages?

A. It could be in the form of training of personnel, administrative help; we are in the age of the computer; purchasing --

THE COURT: You mean volume discounts?

THE WITNESS: Purchasing in large volume than an individual house could possibly purchase, and possibly draw on a manpower pool. I forgot one item, I'm sorry, a very important one -- financial strength.

MR. SIRIGNANO: I would like to have marked for identification and introduced at this time Plaintiff's Exhibits 11 and 12, a stipulation with respect to the acquisition by the defendant of Sechter and Eebard Metro and Hebard Dental.

(Plaintiff's Exhibits 11 and 12 marked for identification.)

THE COURT: Show them to counsel.

MR. JINKINSON: There is no objection.

THE COURT: Without objection they will be received.

(Plaintiff's Exhibits 11 and 12 received in evidence.)

THE COURT: We are going to have a confused record.

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What exhibits have just been received in evidence?

MR. JINKINSON: 11 and 13.

THE CLERK: I marked it 11 and 12.

THE COURT: Let's see the pieces of paper that the clerk has received in evidence. They are 11 and 12, I believe.

MR. JINKINSON: I have not seen 12.

THE COURT: Let the record show that Exhibits 11 and 12 have been received in evidence without objection. in the same of the

Now, do you want to offer 13?

MR. SIRIGNANO: Yes, sir.

THE COURT: Show 13 to Mr. Jinkinson.

(Plaintiff's Exhibit 13 marked for

identification.)

THE COURT: What about 13, Mr. Jinkinson?

MR. JINKINSON: I have no objection.

THE COURT: Without objection it will be received.

(Plaintiff's Exhibit 13 received in evidence.)

MR. SIRIGNANO: We would like to have marked for identification and introduced at this time in evidence Plaintiff's Exhibits 16 and 17.

(Plaintiff's Exhibits 16 and 17 marked for identification.)

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MR. SIRIGNANO: These, your Honor, are stipulations and interrogatory answers with respect to the sale of the acquired company.

THE COURT: I think they are both interrogatories.

MR. JINKINSON: No objection, except for the objections that are contained in the interrogatories themselves. We did not know what the sales of SS White and Company were.

THE COURT: All right.

MR. JINKINSON: The objections are contained in the answers to the interrogatories.

THE COURT: They will be received. Mark them in evidence, Mr. Clerk.

(Plaintiff's Exhibits 16 and 17 received in evidence.)

MR. SIRIGNANO: I would like to have marked and introduced into evidence Exhibits 18 and 19.

(Plaintiff's Exhibits 18 and 19 marked for identification.)

MR. SIRIGNANO: These are all stipulations with respect to the sales and other stipulations with regard to the acquiredcompanies.

MR. JINKINSON: As to 18, your Honor, we believe it is misleading. It shows that sales were made in almost

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every county of the alleged geographical area. It gives total sales of all the companies we now own or have acquired. It is misleading, because not all of the companies we acquired made sales in all of these counties.

THE COURT: I will permit you to point that out in argument.

What about 19?

MR. JINKINSON: No objection.

THE COURT: 19 is admitted without objection; the objection to 18 is overruled.

(Plaintiff's Exhibits 18 and 19 received in evidence.)

THE COURT: Let me see them for just a minute.

Taking a look at Exhibit 18, if you please, am I to understand that the top line, All Dental Products, includes the other two items, dental equipment and dental sundries?

MR. SIRIGNANO: Yes.

THE COURT: So to get the total sales you don't add these at all, but dental equipment and dental sundries is just a break out of the top figure?

MR. SIRIGNANO:

MR. JINKINSON: That is not true. The top line includes not only the two bottom lines, but the other two items.

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THE COURT: I understand, because if I add the two lines, Dental Equipment and Dental Sundries, I don't get the total.

MR. JINKINSON: They include sales of teeth and precious metals.

THE COURT: I don't understand. I should add all three lines in order to get your sales?

MR. JINKINSON: Oh, no.

MR. SIRIGNANO: That is correct, your Honor.

Q Mr. Walter, will you generally describe the types of employees employed by your company?

A ... We have sales representatives out in the field.

Q Describe what they do, sir.

A They visit the dentists and dental laboratories. We have equipment specialists.

Q If I may get back to sales representatives, what goes on in the course of their visits to dentists and dental laboratories?

MR. JINKINSON: I object. That is calling for hearsay, as though he knows what is going on.

THE COURT: I agree, but I will take it for what is is worth.

Q What are the duties of the sales representatives?

A The main duty is to create sales for the company ervice the customer with whatever needs he may have

and service the customer with whatever needs he may have and with whatever information he may have in the performance of his duties and motivate him to purchase from the company the representative represents.

Q How often does a sales representative usually visit a particular dentist?

A That varies from sales representative to representative. It can vary with the size of the doctor and general accepted practicein our trading area, and this is subject to generalization, once every two weeks.

THE COURT: Mr. Walter, I am curious just based on a layman's knowledge of when I go to my dentist, but I get the impression, they have one appointment after another and I am curious, when does a salesman catch them? Early in the morning, late at night, or does that make any difference?

THE WITNESS: Your Honor, from early in the morning to late at night, it depends on the dentist and the penetration this particular representative has with the customer. It also depends whether or not he can get past the receptionist.

THE COURT: It is a problem, I assume.

rkb-2 Walter-direct THE WITNESS: It is a problem and the biggest job the man has is to sell himself to the customer. THE COURT: So that the doctor will stop what he is doing and say to the patient, excuse me for just a minute, then he will take a few minutes off? THE WITNESS: It is also not unusual for the sales representative to be in the treatment room while the patient is in the chair. THE COURT: All right. 10 In addition to sales representatives, what other 11 employees do you have? 12 13 14

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We have equipment specialists whose duties are to draft and lay out dental laboratories, suites and consummate the sale of dental equipment.

We have dental equipment repairmen who are out in the field most of the time making repairs in the doctors' offices. General clerical help for accounts receivables, payable.

We have clerks for filing the sundry orders. We have trained clerks for answering the telephone, customer calls. Receiving department and shipping personnel and we have managers to supervise the various groups.

Is there any particular employee that deals specifically with artificial teeth or dental precious metals?

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2	A Generally speaking, if the amount of the
3	business warrants it, there are one or more people specific-
4	ally assigned to handling what we call the tooth counter
5	· or the gold counter.
6	Q In addition to the actual sales of the products
7	you carry to the dentist and dental laboratories, what
8	services do you offer?
9	A Management advice, helping them to find dental
10	assistants and dental hygienists, helping them to locate

A Management advice, helping them to find dental assistants and dental hygienists, helping them to locate a dental associate, another young dentist for either partnership or for employment, or as we put it very often, we offer all the services from the cradle to the grave.

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Q Approximaely how many items do you carry in inventory?

A It is very hard to pinpoint it exactly. Generally accepted figure for a full service supply house such as ours would be in the neighborhood of 20,000.

Q Now do you acquire these products?

A We receive them in most cases directly from the manufacturer.

Q Are there any sources of supply other than manufacturers from where you get such products?

A They are importers, distributors and there are some sources of supply for products other than purely dental

We use in our area United Parcel. We use a local and we make every effort to avoid the U. S. Postal Service. 68a SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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Walter-direct

	Ω.	Mr.	Walter,	in t	he year	s that	you have	e beer	n
in	the dent	al pr	coduct b	isine	ss, how	many	dentists	have	you
com	e in con	tact	with per	rsona	11y?				

- A That is hard to say, but I would say maybe 1000.
- Q What has the nature of your contact been?

 MR. JINKINSON: I don't see the relevancy of this.

THE COURT: I suppose he is trying to show to what extent he is familiar with it, then he is going to ask him something else. I don't know. Let's listen.

A To meet the dentists who come to our office. I

like to meet them and shake hands. I meet many of them

at the dental meetings such as the Greater New York meeting,

which takes place in December. I meet them at the dental

society functions. That is about it.

THE COURT: What is the dental society?

THE WITNESS: The American Dental Association has an annual meeting which travels from one town to another. They have local meetings, local constituents and the Greater New York meeting which I mentioned just before, is a meeting which used to meet at the Statler-Hilton Hotel, this year it is going to meet for the first time at the New York Hilton and attracts in the neighborhood, if I remember last year's figures, about 11,000 dentists.

THE COURT: And you make it your business to go to these affairs?

THE WITNESS: To go to these meetings to meet our customers, we have a hospitality suite, and we shake hands.

Q Apart from the shaking of hands, have you had discussions with these dentists with whom you come in contact?

A Yes, sir.

Q Do those discussions involve the subject of the products and services which you have available?

A Yes, sir.

Q Mr. Walter, can you tell me what a dentist opening up a new office would require in terms of the products
which you make available to him?

A It usually starts out with the services that we render in the planning of the office, then hopefully it develops into the sale of major equipment and his opening order of sundries.

Q Essentially what would a dentist opening a new office require in terms of equipment?

A This very much depends on his personal desires
and his personal preferences, but an opening order of equipment could, very well, go from anywheres from twelve to

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2	\$15,000.
3	Q What would it consist of, at a minimum?
4	First, let me say, are there items which a
5	dentist must have before he can practice?
6	A Yes, sir.
7	Q What would those items be?
8	A Chair, a dental unit, an x-ray, a sterilizing
9	apparatus such as an autoclave, dark room equipment. Those
10	are the minimum items.
11	Q Let's take themone by one. First you mentioned
12	was a chair.
13	A Right.
14	Q Generally, what is the cost or range of cost of
15	the chair?
16	A Depending on the configuration and the type that
17	he would like to have, it could vary from I will make
18	it a broad spectrum, from \$1500 to \$2500, and we now have
19	one already that is above 2500.
20	Q What is involved in the installation of the chair
21	A It will take at least two mechanics to uncrate
22	and assemble the chair.
23	Q The next item you mentioned was a dental uni
24	A · Yes.
95	O What does that consist of?

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Walter-direct

A Dental units come in different shapes and sizes these days and it is basically the very thing that most of us don't like, the drill, the syringe, cuspidor, the dental light mounted on it if so desired. It is the working part of the dental office that the dentist uses most.

Q What is the range of price of a dental unit?

A That can go anywheres from as low as \$1900 to, we have seen six and \$7000.

Q What does the installation of a dental unit normally involve?

A It takes trained mechanics to install them and install them properly, after plumbing and electrical work has been done.

- Q What is the next item that you spoke of?
- A X-rays machines.
- Q What is the range of price of an x-ray machine?
- A Like automobiles, they too come in different price ranges. They can run anywheres from \$1500 to the latest type which will take an x-ray of the entire arch in the mouth at one time, which will run approximately \$7000.
- Q What is involved in the installation of an x-ray machine?

A Expertise by the mechanics and now an everincreasing knowledge of the Federal rules and regulations

such as an autoclave. range. I am generalizing. ive models available.
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Walter-direct

- Q You mentioned before in your accounting, you classify certain durable items selling for u nder \$100 as a sundry, is that correct?
 - A Yes, sir.
- Q Approximately what percentage of your sales are accounted for by durable items selling for \$100?
- A I have no idea, but for all practical purposes, the figure is immaterial. It is very small.
- Q With respect to sundries, what would a dentist opening a new office require in terms of sundries?
- A Again, depending on his personal preferences and methods of operation and also depending on whether he is a general practitioner or specialist, which can also make quite a difference, we can say anywhere between \$1500 and \$2500, possibly. It could even be somewhat higher.
- Q How about artificial teeth and dentist precious metal?
- A Not too many dentists buy artificial teeth.

 They usually prescribe them and the laboratory purchases
 those. Some dentists, especially when they first start out in
 practice, may purchase precious metals and make their own
 castings, but as they be come busier, they are more productive
 at the chair than in the lab, and most of the precious metals
 for that reason are sold to dental laboratories, and

dental supply house or a dental supply salesman.

You say dental supply house or dental supply dealer. Is there any difference between those two words?

I like to use the word dental supply house rather than dental dealer, but that is my personal preference.

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Walter-direct

THE COURT: You are using them interchangeably?
THE WITNESS: Yes.

A What I meant was without the services of a dental supply house or dental supply salesman or representative.

Q Do you know of any company or any competitor who is not a dental dealer who is in a position to offer the same services, same variety of products which a dental dealer is?

A No, sir.

Q Do you know of any company not a dental dealer which offers the products and services which are necessary toopening a dentist's office?

A No, sir.

Q Do you know of any manufacturer of dental products which is making direct sales to dentists or dental laboratories or Government institutions which is offering the same variety of products and services as your company?

A Not a single manufacturer with all these services.

Q Do you know of any mail order house which is offering the same variety of products and services as your company?

- A To the best of my knowledge, no.
- Q Do you know of any mail order house which

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1	rkb-14 Walter-direct
2	furnishes the variety of equipment which is necessary
3	for a dentist to open an office?
4	A Not with the variety that we have to offer.
5	Q I believe you referred earlier to receiving
6	orders by mail.
7	A Yes, sir.
8	Q How important are mail orders in your business,
9	that is, mail orders which your company gets?
10	THE COURT: I believe Mr. Walter said, and you
11	can correct me if I am wrong, that he got through the mail
12	orders from salesmen, from his own salesmen.
13	THE WITNESS: Right. We receive very few orders
14	in the mail directly from a customer.
15	Q Mr. Walter, you stated, I believe, that the area
16	in which you presently competed in 1973 was slightly larger
17	than the area in which you competed in 1968, is that correct
18	A Correct, sir.
19	Q . What are the factors which determined the area
20	in which you could compete.
21	A The size of the sales force and the ability to
22	service the customers efficiently from the home office,
23	equipment, service, delivery of merchandise, etc.
24	Q Mr. Walter, you state you received orders from
25	your salesmen by mail.

	1	rkb-15	Walter-direct
	2		Do you receive all your salesmen orders by mail?
	3	Α .	No, sir.
	4	Q	How else do you receive them?
	5	A	They may phone in emergency orders by telephone
	6	and also br	ing them in on their regular shifts to the
	7	office.	
	8	Q	Is there an occasion when a dentist may phone
	9	your office	directly for orders?
	10	A	Yes, sir.
	11	Q	Can you state whether or not you have employees
	12	whose speci	fic duty it is to take phone orders?
	13	. A	We do.
	14		MR. SIRIGNANO: I would like to have this marked
	15	for identif	ication as Plaintiff's Exhibit No. 15.
xxx	16		(Plaintiff's Exhibit 15 was marked for
	17	ident	ification.)
	18		THE COURT: Has counsel seen it?
	19		MR. JINKINSON: No, we have not.
	20		THE COURT: Would you show it to the witness, Mr.
	21	Clerk.	
	22	Q	Mr. Walter, have you ever seen this document
	23	before?	
	24	λ.	Yes, sir.
	25	Q	Can you tell me what the circumstances of your
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terms of information?

A percentage breakdown of our sales in the various categories as listed and I assumed this would be an average of the years listed below, namely '68, '69 and '70.

How much variation during the period 1968, '69

I only reviewed the totals but not the breakdowns.

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2	rkb-18 Walter-direct
	Q Did you have occasion to discuss this particular
3 "	document with defense counsel?
	A Yes, sir.
5	Q What were the circumstances of that discussion?
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7	To the precial deposition.
8	Q Apart from that, did you have any occasion to
9	discuss this at your office with defense counsel?
10	A Yes, sir. I personally did not. Defense couns
	visited the office after pretrial depositions.
11	Q Did you leave any instructions with your company
12	with respect to the availability of your records to defense
13	counsel?
14	A Yes, sir.
15	
16	open books and they can collect
17	the figures.
18	THE COURT: Mr. Reporter, would you read the
19	last answer?
	(Answer read.)
20	THE COURT: In other words, you made your
21	records available to counsel for the defendant?
22	THE WITNESS: Yes, sir.
23	
24	and the state of avail themselves of
25	that opportunity?

A Yes, sir.

rkb-19

Q How do you know?

A Because the appointment came through my office and I knew that defense counsel was in our office talking to my comptroller and because of another business commitment I could not join them, but I knew he was there.

MR. JINKINSON: I don't see the relevancy of this, but if counsel wants to admit we were in the office, we were in the office and did check his records.

THE COURT: I don't know myself, Mr. Jinkinson, not yet.

MR. SIRIGNANO: Would you like me to explain its relevancy?

T HE COURT: Yes. You are not trying to prove something that the defendants did anything wrong, are you?

MR. SIRIGNANO: By no means. However, your Honor, after you re i defendant's brief you will see that the major part of the brief is an attack upon the validity of the survey that the Government has conducted.

The Government is in a position to cite evidence showing that defense counsel has actually in fact examined or had access by means of subpoena to the records of the companies which comprise anywhere from 70 to 80 per cent of the dollar volume accounted for in our survey and I think

90 rkb-20 Walter-direct that is relevant in terms of the position which the defend-2 ant takes that our survey was inaccurate. 3 I know know the fact that the defend-THE COURT: ant had access to these records necessarily means that the 5 survey is accurate. MR. SIRIGNANO: By itself, it does not. 7 THE COURT: The defendant is not making any point about the facts. He is saying as far as Mr. Walter 9 is concerned, they were there. You have established it, 10 let's go on. 11

Q Mr. Walter, you previou ly mentioned a number of major competitors who were operating in 1968. Can you tell me whether any of those companies you consider to be major competitors in 1968 were no longer in business?

A Yes, sir.

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Q What companies are those?

A Again I have to rely on memory. Certified, D.E.S.

as I used to remember them, Dental Equipment Specialists,

Kings County Dental Company, Kings County Dental Supply

Company.

- Q Was that a major competitor?
- A It was a competitor of sorts.
- Q Was it a major competitor?
- A No.

Walter-direct

MR. JINKINSON: How do you distinguish between a major and minor?

THE COURT: I really don't know. I think he said at one point, if they did about as much of a million dollars worth of business or he thought they did, he would consider them major. Is that about it?

THE WITNESS: That is right. With that definition, I believe they did less than one million dollars.

Guterman Dental Supply.

In 1968 we had two companies and the name no longer exists because it has been merged together, S. S. White and General Dental.

I believe that is as far as I can remember.

Q Do you recall the name Levinthal?

A I am sorr, Litton. Formerly also known as L. D.

Calk. They were located in Newark, then in Bloomfield.

Then Levinthal in Irvington, New Jersey.

Q These are companies which have gone out of businessin this area?

A Yes.

THE COURT: Litton has gone out of business?

THE WITNESS: Litton had a supply house which originally was located in Newark, then moved to Bloomfield,

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1 rkb-22 Walter-direct 2 then was actually closed up by the Litton Company. 3 They still have a branch south of here near Philadelphia. 5 THE COURT: Litton acquired something called 6 L. D. Calk? 7 THE WITNESS: Right. 8 THE COURT: After Litton acquired L. D. Calk, 9 the time came when the business was closed? 10 THE WITNESS: That particular branch was 11 closed. End 3 AM 13 14 15 16 17 18 19 20 21 22 86a 25

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Walter-direct

Q Tell me which of these dealers you mentioned have gone out of business were full line dealers?

A With the exception of the one that I mentioned,
Kings County, the others were all full line dealers.

Q Do you know any full line dealers who have entered the market since 1970?

A No, sir, except for one, who has grown considerably. I could consider him now almost full line.

- Q Was he in the market in 1968?
- A Yes, sir.

Q Do you know any totally new companies which have come in as full line dealers since 1968?

- A Not to the best of my knowledge.
- Q Do you know any companies which have entered the field as dental dealers since 1968?
 - A No, sir.

Q Will you tell me generally what is involved in going into the business of being a dental dealer? What are the requirements?

A This is almost like which came first, the chicken or the egg. You need sales representatives and you need the various lines of products. You can't have one without the other.

Q What is involved with hiring sales representatives?
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A Making it attractive to them to join the company in either the form of better remuneration or better back-up and support in their daily activities with a customer.

Q Will you state whether or not it is easy or difficult to get salesmen?

A Very difficult.

Q You mentioned the availability of lines.

How does that relate to entering the dental product business?

A I believe it is each and every manufacturer's right to determine whether or not he needs additional distribution in a given area or whether or not it is to his advantage to add to his distribution in that area.

Q How does this affect the ability of someone to enter the business as a dental dealer?

A It is a difficult struggle up the road.

Q Are there dealers presently operating in New York who do not carry important lines of equipment?

MR. JINKINSON: I object to the question.

I don't know what important lines of equipment are.

THE COURT: Yes, I think I will sustain that objection as to form.

will you tell me, Mr. Walter, what in your

opinion are the biggest names in dental equipment and supplies?

MR. JINKINSON: You are talking about -THE COURT: Let's take sundries, equipment,
artificial teeth; let's take them one at a time,
Mr. Sirignano.

Q In the field of equipment, what manufacturers are most well known?

A Well, I will be glad to mention a few mames, but I do have to preface the remark by saying not too many years ago there were three major manufacturers of dental equipment, SS White, Ridder and Weber.

THE COURT: Weber?

THE WITNESS: W-e-b-e-r.

Today all three make dental chairs. Today
we have available approximately in the neighborhood of
35 manufacturers who manufacture dental chairs.

THE COURT: But are those three the best known names?

THE WITNESS: They are still the leaders, but there are a few additional ones who have become quite well known.

Q To what extent are those particular lines, dental chairs, available to all dealers?

A Most of the manufacturers have a number of outlets for their products in a given geographic area, and they feel it is best for their own interests. Generally speaking, it is difficult to obtain these dealerships.

THE COURT: I think we'd better stop here for our luncheon recess.

Generally, my habit has been to have a luncheon break between 12:45 and 2 o'clock, but I don't know the availability of eating places and your knowledge of them.

Do you think that gives you enough time?

MR. SIRIGNANO: We have no problem, your Honor.

THE COURT: Well, Mr. Jinkinson is operating

far from Chicago. Do you think that gives you enough

time?

MR. JINKINSON: How about 2:15.

THE COURT: Suppose we come back at 2:15, then.

(Luncheon recess taken.)

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resumed.

DIRECT EXAMINATION (continued)

BY MR. SIRIGNANO:

Mr. Walter, I would like you to examine Plaintiff' Exhibit 15. Did I understand you to say you personally did not verify the ent-ies in this return?

I did not.

Mr. Walter, state whether or not there is anything in that return which is inconsistent with your knowledge of the operations of the company of which you are president?

MR. JINKINSON: I think the document speaks for itself.

THE COURT: Yes, I am inclined to agree with you, but I will let him answer if he can.

A I believe that these figures are correct. I put my signature to them.

MR. SIRIGNANO: No further questions.

CROSS-EXAMINATION

BY MR. JINKINSON:

Mr. Walters; I have a few questions to ask you. You say you have been in this market or the dental supply business since 1946?

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Walter-cross

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	 A	100	Correct,	sir.
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- Q About 23, 27 years, is that right?
- A Correct.
- Q And you claim a familiarity with the market?
- A Yes, I do.
- Q In knowledge of the market?
- A Right.

Q I noted this morning Mr. Sirignano was asking you questions with regard to your competition in the market that he was using and he used the term "full line dealer" and "full service dealer."

You don't want to leave the impression with the Court or in this recordthat that is the only competition you have in the sale of dental supplies in the metropolitan area, do you?

- A No, sir.
- Q There are many other sellers of dental supplies in the market who are not major competitors?
 - A Correct.

THE COURT: Excuse me, who are not major competitors?? They are competitors but not major competitors?

THE WITNESS: Right.

THE COURT: Taken in the aggregate, I suppose you lost a lot of business to these competitors?

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THE WITNESS: Yes.

Q Let me rehearse some of the things you said
this morning, and as I understand it, you run a retail
shop and it is questionable, sometimes it should be identified as a wholesale operation, should it not?

A It looks like the Federal Government classifies it as wholesale. The local government classifies it as retail.

- Q That is for the purpose of collecting taxes?
- A That is correct.
- At your place of business, you attempt to sell the dentist in the area in which you operate?

THE COURT: And laboratories.

A Right.

Q The dentists are the major part of your business, are they not?

A Yes, sir.

Q As a matter of fact, the laboratory business is rather expensive, is it not, because of the manner in which they operate? They purchase mostly from you teeth?

A Correct.

THE COURT: Teeth from the dental dealer?
MR.JINKINSON: Right.

Q You send them out a set of teeth, they select

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one or two of them and send them back.

That is an expensive operation?

A Yes, sir.

THE COURT: You mean for Mr. Walter?
MR. JINKINSON: Yes.

- Q Mostly the business you get that your firm Walter receives comes from the dentist?
 - A Right.
- Q Do you know approximately how many dentists there are that practice dentistry in the metropolitan area?
- A I have no statistics that I can verify or put my hands on. For my own thinking in the area that we are trading in, I believe approximately 10,000.
 - y Or more?
- A Or more dentists operating as practitioners in their own offices or in conjunction with another dentist or two.
 - Q How many customers do you have, dentist customers
 - A Approximately 2300.
- O Do you have any statistics or information as to how much a dentist will purchase in a year by way of sundry and equipment? Is there some rule of thumb in the trade?
 - A Surveys have been made by the American Dental

1	rkb- Walter-cross 101
2	Association and by the American Dentral Trade Association.
3	A rule of thumb guess, to the best of my know-
4	ledge the average dentist and the average dentist does not
5	exist, purchases approximately \$3500 worth of materials
6	throughout the year.
7	THE COURT: That would be all sundries?
8	THE WITNESS: Correct, sir.
9	O The way you sell these supplies to the dentist
10	is through salesmen, is it not?
11	A Yes, sir.
12	Q Almost exclusive?
13	A Yes, sir.
14	Q And really the backbone of your business is
15	your salesmen?
16	A Correct.
17	Q And the contacts they made with the dentists?
18	A Yes, sir.
19	Q While Mr. Sirignano asked you about your major
20	competitors, I want to ask you how you compete in this market?
21	Is that a question that is confusing?
22	Let me put it this way. You are competing in
23	this market both with your competitors, major and others
24	pricewise through service, your honesty and integrity and

through quantity merchandise, is that right?

days?,

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- A In the overall picture, I would say yes.
- Q . The dentist is, after all, a professional man,

And that s an appeal to the dentists.

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A Some.

Q And that accounts for the growth of the mail order house, doesn't it?

A Yes.

MR. SIRIGNANO: Objection.

THE COURT: I will permit it.

- Q You have been in this market since '46?
- A Yes.
- Q You were in the market just prior to 1969?
- A Yes, sir.
- Q You were here when Health Co. made its acquisition of the three S and S sto-es?
 - A S.S.W.
 - Q S.S. White?
 - A Yes.
- Q At the time that Health Co. made the first acquisition January 1, 1969, of the three S.S. White stores, did you consider the dental supply business in the metropolitan market to be competitive?
 - A Yes, sir.
- Q You were here in 1969 when Health Co. acquired National, General, Hebard, Metro, Hebard and Sechter, weren't you?

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A Yes, sir.

Q You were operating in this market on April 2,
1970, when this lawsuit was filed charging the defendant
with substantially lessening competition in the sale of dental
supplies in the metropolitan market, were you not?

A Yes.

Q On April 2, 1970, had you observed any lessening of competition in the sale of dental supplies in the metropolitan market?

I am asking you if you recognized or observed any lessening of competition.

A Not at that point. To the best of my ability to recall.

Q You have been in the market from 1969 to date and at his time do you observe any lessening or substantial lessening of competition --

MR. SIRIGNANO: Objection. The term substantial less competition is a legal conclusion.

THE COURT: I agree, but it is for me to decide.

I will let him answer the question.

A I would say that competition has changed over those years.

Q You would say that?

A That competition has changed over those years.

Q	,	In	what	way?

- A The influx and the continued growth of the catalog houses as far as we can tell.
 - Q And competition has increased?
- A Competition has increased from catalog sales to the best of our knowledge, and from what we hear from our salesmen.
- Q Isn't the Rower and Sechter and the rest of the companies trying to compete vigorously in this market?
 - A Yes, sir.
 - Q And lessening competition, I would think?
 - A No, sir.
- Q Do you know whether or not at the time we purchased the S. S. White stores in the metropolitan area, whether Health Co. had access to the National line which S. S. White & Company were carrying?
- A At that time I knew what was then called Rower as a company in Boston. What lines they had, what original ones they did not have, I could not testify to.
- You don't know it to be a fact that Rower

 6. Company bought the three S. S. White Stores for the

 express purpose of getting access to National lines?
 - A . This was the impression I was under.
 - Q That is why they bought it?

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A That is what I felt, but I couldn't testify to that.

Q Getting down to your testimony this morning about the advantages that a chain operation has, I think that you gave several reasons to the Court which in your opinion gave a chain operator an advantage over the independent dental supply house.

Are there also some disadvantages to chain operations vie-a-vis an independent operation?

A There are some, yes, sir.

Q Isn't it one of them the lack of incentive and interest of the owner and his business against a manager operating a branch at the managerial level? Isn't that one disadvantage that the chain faces?

A Normally, yes.

Q Isn't another that the local manager such as you in your business is involved in all aspects of the operation and knows what is going on in all aspects of your business, is that correct?

A Yes.

Q And a chain has to rely on the information given him by the local manager, isn't that right?

A Correct.

Q Sometimes that information is incorrect, is that

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A I can't say.

O It could be?

A It could be. I have never had the experience so I can't tell.

Q Isn't it a fact that a dentist being a local operator, an individual, enjoys dealing with an individual owner such as you rather than he would with a chain?

A Would you repeat that question?

MR.JINKINSON: I will withdraw the question.

Q Let me put it this way. The dentist being an individualist and the relationship existing between buyer and seller, it is a personal one, isn't it?

A Yes, sir.

Q And the local dentist would rather give the loyalty to the local supplier rather than he would a chain, haven't you found that to be true?

A I really believe that this is a matter of individual determination by a practitioner with his direct contact
with the salesman and whether that salesman is a member
of a chain or employed by a private ownership may or may
not make a difference to the dentist, but he is primarily
in contact with the salesman.

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Q I think we have	established that he is primaril
in touch with the salesman.	Isn't it a fact you have
more of an advantage in hiri	ng salesmen than a chain does?

A Not necessarily.

Y ou can adjust any differences between your salesmen on an individual basis, can't you? Whereas a chain they are under a system where one is treated like all, whether there are a thousand salesmen?

A I am afraid we have to treat each one of our men the same also, but we would have problems within the organization.

Q Isn't it a fact that chains carry a standardized inventory, do you know?

A I do not know.

Isn't it a fact that you can adjust your purchases to the needs of the dentist more easily than a chain company which has a standardized inventory that has to get permission from the home office to buy a specialized product that a dentist might need?

A I have the advantage of being able to make a decision quickly.

- O So that is a disadvantage to the chain, is it not?
- A Yes.
- Q You can control the salesman's commissions or

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compensations and make adjustments to please him to retain him whereas a chain can't do this, can they?

MR. SIRIGNANO: I want to object to the form of that question.

THE COURT: Of course it is argumentative, Mr. Sirignano, I agree with you. If he can answer it, I will permit it.

A I believe I stated earlier that I would find it very difficult to treat one man different -rom another as far as commissions and bonuses are concerned.

- Q A local ownership operation has no corporate overhead expense to be absorbed, does it?
 - A No, sir,
 - Q And that is an advantage, isn't it?
 - Yes, sir.
- G. Mr. Sirignano went into at length about the cost of opening up an office --

Mk. SIRIGNANO: Objection. There is no foundation in the record that I ever did so.

I am worry, I withdraw that. I mistook the word "office" for "dealership."

THE COURT: It is the dentist opening an

MR. SIRIGNANO: I withdraw the objection.

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Q I just want to know this. Mr. Sirignano asked you what a chair cost --

THE COURT: When a dentist starts out opening his office.

Q Is there any rule of thumb in the trade about what it cost a dentist to equip his office so he can start practicing dentistry? Isn't it commonly accepted in the trade that it costs around approximately \$15,000?

A That is the figure I used this morning.

Q About \$15,000?

A About that amount.

Q Have you ever seen the advertisement in the catalog put out by the Blank Drug Company?

A Yes, sir.

Q That is a mail order house, isn't it?

A Yes.

Q It has a flyer across the top, "Everything that'

A Yes, sir.

Rave you ever looked in that catalog and traced the items that the dentist would need to open his office and totaled them up and found that a dentist from Blank Company opens his office at a cost of \$13,500, at a savings of \$1500?

Q It's possible for dentists to turn to the Blank catalog and order everything he wants to start his office? Isn't that right?

A I don't know.

Q Well, you say that in the sale of heavy dental equipment, like chairs and such units that one of the advantages you have is because you furnish the service?

A Correct.

Q Now, there are places of business, people in New York City, firms which furnish dental repair and whatever needs to go with the service for equipment?

A Yes.

Q And a dentist can order all the things he needs to furnish his office and hire one of these shops that furnish dental repair and service without the necessity of going to a full line dentist supply house?

A He could.

Q So a dentist really doesn't need the full line of the full service supply house to get in the business?

Does he? It is to your advantage that he need it?

A . I don't like to believe that.

Q I know you don't like to believe it, but it's true.

A It would be very difficult for him to accomplish it.

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Q I didn't ask you whether it would be.

THE COURT: It is physically possible.

THE WITNESS: But highly improbable.

THE COURT: It is physically possible, but in your view not a satisfactory and terribly inconvenient and the rest of it.

THE WITNESS: That is correct. There is planning and everything else involved.

Q But if he insisted on going out and doing it he could do it?

A Yes.

THE COURT: But not possible in your opinion?
THE WITNESS: Yes.

- Q You wouldn't like to see it? Is that right?
- A Of course not.
- Q Because you need the dentist probably more than he needs you?
 - A That is putting itmlidly.
- Q Mr. Walter, you were pretty limited in the acknowledgement of your competitors this morning, I believe. I suppose when you give in that list, you were giving your major competitors?
 - A That is correct.
 - Q You say some of them are not in business

1	msg 3 Walter-cross
2	today, like General, of course, which was acquired by
3	Rower. And you say Guterman is not in business?
4	A Correct.
5	Q He was not acquired by anybody, was he?
6	A No, sir.
7	Q As a matter of fact, he had an unfortunate
8	experience when one of his salesmen started another company
9	A Yes.
10	Q So he didn't go out of business because of any
11	acquisition that was made; it was something else that
12	happened to him?
13	MR. SIRIGNANO: Objection.
14	THE COURT: No. I will permit it. Overruled.
15	Q Isn't that right?
16	A Yes, sir.
17	Q Now, Certified isn't in business today, you
18	stated this morning. Do you know why Cartified is not in
19	business?
20	A I can't state with knowledge as to why they are
21	not in business. I do know that they are out of business.
22	Q And you don't know why?
23	A . The only knowledge that I have is they had
24	Tinancial difficulties.
25	Q A great number of their employees were picked up
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by Central Dental Company?

A Yes.

Q You said DES is out of business, not in business today?

- A Not in the form they were a number of years ago.
- Q And they were in equipment only, weren't they?
- A That is many years ago.
- Q DES.
- A Was in equipment only.
- O DES?
- A Yes.
- Q Was in equipment only?
- A Many years ago.
- Q And they couldn't make it in equipment only, could they?
 - A This I cannot say under oath.
- Q Well, they didn't make it, anyway? They closed that part of the business?

MR. SIRIGNANO: I object.

THE COURT: If he can answer it, Mr. Sirignano, he may. He testified on direct examination that these people have been out of business, and I think it is appropriate to ask him what he knows about their going out of business. I will permit it.

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THE WITNESS: Your Honor --

THE COURT: Yes.

THE WITNESS: I am under oath and so I can only testify to that which I know as a fact.

THE COURT: Yes. Don't hesitate to say if you don't know.

THE WITNESS: There are a lot of other assumptions. If I am permitted to say what I think, then I stand subject to correction.

THE COURT: Of course.

- Q But Dental Specialists was owned by Applied
 Health Services and they are now a mail order house?
 - A Yes.
- Q Selling sundries or any equipment? Or just sundries?
 - To the best of my knowledge only sundries.
 - Q. No equipment?
 - A. No, sir.
- Q Whereas at one time they were in equipment only?
 - A Yes, but in between they had a full service.
- Q I want to read you a list of names and I want you to tell me whether or not you have heard of them and whether or not you know they are a competitor of

7	是在"大大"的"大大"的"大大"的"大大"的"大大"的"大大"的"大大"的"大大"	
1	msg 6 Walter-cross 117	
2	Walter Dental today or have been since 1969.	
3	Aid Dental Supply?	
4	A I don't know them.	
5	Q By-Rite Dental Supply Co.?	
6	A They operate under a number of different names	
7	and I know them.	
8	THE COURT: Do you know them?	
9	THE WITNESS: Yes, that is only one of the name	3
10	that they are using.	
11	THE COURT: Are they competitors of yours?	
12	THE WITNESS: Yes, sir.	
13	Q CDP, that is, Challies Dental Products,	\
-14	Morrisburg, Ontario, Canada?	
15	A Never heard of them.	
16	Q Colwell Co.7	
17	A Where are they located?	
18	Q Champaign, Illinois.	
19	A Yes, sir, I have heard of them.	
20	Q You have heard of them in this market?	
21	A They are advertising in national journals.	

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dentists and are now also selling a limited amount of

of appointment books and bookkeeping material for

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THE COURT: Are they competitors of yours?

THE WITNESS: They started out in the selling

mag 7	Walter-cross 118	:
supplies.	The state of the s	•
4.4	THE COURT: In the field in which they sell, do	
they compe	ete with you?	
	THE WITNESS: Yes, sir.	
Q	Durby Dental Supply Co.?	
	Yes, sir.	
Q	They compete with you?	
A	They do.	
Q	Direct Dental Service Co., Greenvale, New York?	,
	I believe that might be the one who is	
advertisi	ng under the name of DDS.	
Q	You have heard of them?	
A * .	I have heard of them.	`
Q	And they are competing in New York?	
λ .	I believe so.	
Q	Dental Mart, Inc., Hackensack, New Jersey?	
λ	I have heard of them.	
0	They are competing with you?	

A Yes, sir.

Q Dental Film Company of N.Y., Monsey, New York?

A As far as I know, they are the same as By-Rite.

Q Are they competing with you in New York?

A Yes, sir.

MR. SIRIGNANO: I don't understand that last

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They do compete with you?

A Yes, sir.

W. E. Horn Co., Sacramento, California.

A I have not heard of them.

Q Interstate Drug Exchange?

have heard of them.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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1	msg 9	Walter-cross		120
2	They are	competing with us.		
3	Q	Novadent Supply Co., Union City,	New Jerse	4 5
4	A	I have no knowledge of them.		
5	Q	NWD? Nationwide Dental Supply,	Brooklyn,	New York
6	A	Nationwide?		
7	Q	Nationwide.		
8	A	Yes, sir.		
9	Q	They do compete with you?		
10	A	That is the same as Preferred,	Dental Film	n,
11	By-Rite.		: '	
12	Q	It is one of those conglomerate	8?	
13	. A	One of those names.		1.
14	Q	Professional Disposable Product	:5?	
15	A	Detroit		
16	Q	They are in Fort Atkinson, Wisc	consin.	
17	A	Definitely familiar.		
18		But you don't recall them?		
19	A	I believe this is W. R. Grace	and Company	•
20	O.	N. Uhler Co., Chicago, Illinoi	s.	
	11			

- A I have heard the name, but have no knowledge of
 - You don't know whether they compete in this market or not?
 - A T have no idea.

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ask you whether you recognize the names on the list and whether they compete with you, and I am going to enter when they entered the market after 1969 and see if you agree with me.

A Just one comment. Sometimes I know the name, but do not necessarily know them as a competitor. They might be operating someplace else.

- Q John O. Butler, sells sundries in Chicago?
- A Yes, sir.
- Q Do they compete in this market?
- A We also purchase from them.
- Q You do?
- A Yes, sir.
- Q They compete with you in this market?
- A They do.
- O Command, who sells equipment from Orlando, Fla.
- A Yes, sir.
- They compete with you in this market?
- A Yes.
- Q Parkell, equipment from Farmington, N.Y.?
- A We purchase from them and we apparently also now compete with them.
 - Q You do compete with them?

	msg 11 Walter-cross 122
1	msg 11 Walter-cross
2	A Yes, sir.
3	Q Splint Bar, sundries, East Meadow, N.Y.?
4	A I don't know them.
5	Q Scotty's Bearway and Turbine?
6	A From Colorado?
7	Q Yes.
8	A They are advertising in national journals, a
9	limited item, repair of high speed hand pieces.
10	Q They do compete with you in the market?
11	A High speed drilling.
12	Q M.B. Technology, sundries, California.
13	A They are not familiar to me.
14	Q Do you recognize them?
15	A No, sir.
16	Q Nowak, sundries, New Orleans?
17 .	A No, sir.
18	Q Floss Aid, sundries, Santa Clara, California.
19	A No, sir.
20	2 Executive Cabinet, equipment, New York and
21	New Jersey?
22	A They are active locally.
23	O They came in the market after 1969?
24	A I cannot attest to that. I have no idea when
25	they started.

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THE COURT: Do they compete with you?
THE WITNESS: Now, yes.

- Q They do?
- A Yes, sir.
- Q Here is one I can't pronounce, but I will see if it is spelled right, Orthopantomograph, equipment, New York and New Jersey. Did you ever hear of that?
 - A Orthopantomograph?
 - Q Yes.
 - A That is a specialized item.
 - Q But they compete with you in this market?
 - A We also sell the product.

THE COURT: You buy it from them.

THE WITNESS: It is a highly specialized item.

THE COURT: So in a certain sense they compete with you.

- THE WITNESS: They will make direct sales, as well as go through a supply house.
 - Q P. 3. B., sundries?
 - A I have heard of the name.
 - Q E-Z Floss, sundries.
- A I believe I have seen the name in the national magazines. Some of these names could be advertised in the national journals for one item only or so.

	, may 13	Walter-cross 124
2	0	Vick/Clark-Cleveland, sundries, Binghamton,
		VICE/CIAIX-CIAVOIANG, BUNGILON, BINGHAMEON,
3	New York?	
•	100	
4	λ	No.
5		
9	0	A.C. Masel, sundries, Philadelphia.
6		• 1
	λ	I know of the Masel Company.
7	Q	M-a-s-e-1?
8	A	Masel. They are in the precious metals business
•		
9	and we put	rchase from them.
10		
10	0	MDC, Medical Dental Corp., Belvedere, Illinois?
11	They sell	equipment.
		od arbuents.
12	A	I have heard of them, but have no knowledge of
	1,5	
13	them.	
14		
.,	Q	Do you know if they sell in New York?
15		To they do they are of an engagement
		If they do, they are of no consequence.
16	Q.	Lincoln Dental?
	* * * * * * * * * * * * * * * * * * *	
17	A .	Philadelphia?
10	137.	
18	Q ,	Yes, sir.
19	110	Yes, sir.
- 4		
20	0	They compete here?
21	A	Yes, catalog.
_	7 19 9 14 1	
22	, Q	Great Lakes, sterilizers?
23		
_	A	I do not know them.
24	.0	Have you ever heard of them?
	***	and Jos and Media of Chami
~		
25	λ	No, sir.

are selling nationally, so they must be selling around here, too.

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Q Superba, sundries and equipment, from Uniteck,

2	California?
3	A Superba?
4	Q Yes.
5	A Yes, sir.
6	Q Do they compete here?
7	A They compete and at the same time sell through
8	dealers.
9	
10	Q Do what?
11	A They distribute through dealers, as well as
12	sell direct.
13	Q Peerless, sundries, Boston?
14	A I know of the company but do not know of their
15	selling direct in our area.
16	Q Kendall Co., Needham, Mass.
17	A Kendall is a big operation. In Needham, Mass.?
18	That could be Davis-Rose-Hoit. It would be a
	pharmaceutical company that belongs to Kendall. They are
19	selling direct in this area.
20	Q In this area?
21	A Yes.
22	THE COURT: Meaning they compete with you?
23	THE WITNESS: Yes, sir.
24	Q Buffalo Dental, Brooklyn, New York, selling sundries
25	A We purchase a fair amount from them, and to the
	120a
1	SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE /22
19	He was a series of the series

Walter-cross

126

mag 15

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best of our knowledge they are now also making some direct sales to dentists.

- Q Mahopac, equipment and service, Carmel, N.Y.
- A I do not know them.
- Q Steve Feola, selling equipment and service.
- A I don't know him.
- Q Cedar Dental?
- A Never heard of them.
- C Savcon Dental, Long Island and New York.
- Pardon me? What is the name?
- Savcon?
 - A Yes, I have heard of them.
 - Q Do they compete with you?
- A Ys, sir.
 - Q Fenner Dental, sundries, New Jersey?
- A I don't know them.
 - Q Avon, sundries, Long Island, New York?
 - A I have not heard of them.
 - D.C.A., equipment, Chicago?
 - I do not know them.
 - Q Reidel Dental, equipment, Denver?
 - A: I have seen their ads in journals.
 - DDS, Inc., equipment and sundries, St. Petersburg,

Plorida?

1.	msg 17 Walter-cross 128
2	Have you heard of them?
3	A I believe I have seen something.
4	Q You have seen their literature and advertisements?
5	A Advertisements, yes, sir.
6	THE COURT: Do they compete to your knowledge?
7	THE WITNESS: I have no idea of whether they have
8	any sales of any consequence in this area.
9	THE COURT: At least, you are not conscious of it.
10	THE WITNESS: No, I am not.
11	D BD Van Kleek, Poughkeepsie, full service.
12	A Full service.
13	Q They compete with you.
14	A Yes, sir.
15	Q Moss X-Ray Nfg., equipment, Chicago?
16	A They compete in a specialized field called
17	orthodenture.
18	Q But they do compete with you?
13	A' They do compete.
20	Q Catalog Sales Corp., Long Island, New York,
21	sundries?
22	
	A I have not heard of them.

- Alloy Casting, New York.
- I don't know them.
- Fixed prosthesis?

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1	msg 18 Walter-cross
2	A That sounds almost like a laboratory.
3	Q Have you ever heard of them?
4	A No.
5	Q Astra, sundries, Wooster, Mass.?
6	A Well, that is a manufacturer.
7	Q Did they compete with you here?
8	A No, we purchase from them.
9	Q You purchase from them?
10	A Heavily.
11	Q But they don't sell direct here to your
12	knowledge?
13	A Not that I know of.
14	Q Dentec Dental, teeth and sundries, the
15	Bronx?
16	A The name does not sound familiar to me.
17	Q Electro Casting?
18	A No, sir. It sounds like a laboratory.
19	Q Reliable Casting?
20	A It sounds also like a laboratory.
21	Q They sell teeth?
22,	A Not known to me.
23	Q Technique Dental, New York, New York.
24	A No.
25	O No?
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	SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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No, sir.

Welcast? They sell gold teeth, New York.

Not to my knowledge.

U.P.L.? Q

Not to my knowledge.

Q Aesthetic?

I heard of a laboratory by that name. A

Did you ever hear of Strictly Porcelain? Q

No, sir. A

Hyde? Q

No, sir.

Sherry Pharmaceutical? It sells sundries?

I think it is a branch of Central?

Yes.

You heard of them?

They compete with you in New York, don't they?

They do.

Wolins?

Yes, sir.

They compete with you in New Y tk?

Yes, sir.

Mr. Walter, I think in response to a question by counsel this morning you laid down some general

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guidelines as to how you could get in a full line supply business today in New York, how much it would cost? How much it would take? What it would take to get in it? Is that right? Do you recall that?

- As to how much it would take to get into it?
- Q Well, the difficulties of getting into it.

THE COURT: You mean, starting in to become a dental dealer?

MR. JINKINSON: That is right.

THE COURT: Well, my memory is very poor, but I don't recall him giving any dollar figures. I could be wrong.

MR. JINKINSON: I don't know whether he gave dollar figures, but he said you have to have sales representatives, you have to have various lines of commerce, articles to sell, and you said that it would be very difficult.

- is that right?
- It is difficult to establish a full service supply house, yes, sir.
- But these sales representatives could be trained, couldn't they? -
 - they have to be trained.
 - After you hire them they could be trained?

Yes, sir.

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Q. Is it very difficult to get accepted lines of merchandise from manufacturers to be sold as dental products?

A Each manufacturer makes his own decision as to whether or not he needs additional distribution in a given geographic area. It has been very difficult to obtain these lines.

Q My question is, is it that difficult to get sufficient accepted merchandise to sell dental products?

Is it really that difficult?

A It is quite different from opening up a grocery store or drug store. It is very difficult to obtain the lines.

Q Now, Mr. Walter, Mr. Sirignano asked you about competition, for example, and I admire you for this, but you and your father started with \$60 apiece 27 years ago, didn't you?

A. Right.

Q And your sales last year was over \$4 million?

A Correct.

o so it's really not difficult?

MR. SIRIGNANO: Objection, your Honor.

THE COURT: Yes, I think the objection is well

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caken. It is argumentative and calls for a conclusion and everything else. But I imagine that Mr. Walter would say that he worked prutty hard for 27 years and it's pretty difficult.

A I am under cath and I will say I lost a stomach in the process.

Q I understand that.

But the Government says it is just too difficult to get into this market, and I say the entry into this market is not as difficult as the government thinks it is-

MR. SIRIGNANO: I ask that the remark be stricken.

THE COURT: We have no jury here and I can be trusted. We are getting into a sort of argument and philosophic discussion with the witness. Let's go on and get his knowledge.

Q Mr. Walter, what were your gross sales, to the best of your memory for the year 1971, that is Walter Dental's gross sales for the year 1971, approximately?

A Approximately, taking a round figure -- I know '72 much better -- but '71, my memory, approximately 3,900,000, something like that.

Q And for '72?

A . 172, between 4,500,000 and 600,000.

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'73? Higher than your last year, '72?

A We think they will be higher.

THE COURT: Of course, the dollar prices have

THE WITNESS: We have an inflationary factor.

THE COURT: The number of units have not probably gone up as much as the dollar volume? Or have they?

THE WITNESS: Not as much, no.

THE COURT: A little of both?

THE WITNESS: We have inflation; we have an increase in unit sales also.

Q I take it from your earlier testimony,
Mr. Walter, that you consider any manufacturer who
makes direct sales to a dental consumer in the market to be
a competitor of yours?

A Yes, sir.

Q Who installed the equipment which is sold directly by the manufacturers?

A I only know of one major manufacturer who sells directly to the consumer, the dentist, and he has his own service department mechanics to do it.

Q How about those manufacturers who sell to the

Veterans
A C C C C C C C C C C C C C C C C C C C

- A You mean the government installations on bid?
- Q Yes. Who makes those installations?
- A That depends on the bid, it depends on the way it was purchased, if it was under GSA contract or not. At times local supply houses will be asked to install at a given negotiated figure.
 - Q Like you?

Hospital.

- A Like me. At other times the manufacturer will make his own arrangement to have them installed at his expense.
- Q Let me ask you this question, Mr. Walter:
 Would it be possible to be a successful dental dealer without
 sundries, your bread and butter?
 - A Not in my opinion.
- Q I ask you the following question, Mr. Walter:

 Isn't it a fact that both dentists' laboratories and

 government installations have more sources of supply today
 than they did five years ago?
 - A " I would agree to that.
 - THE COURT: Any redirect?
 - MR. SIRIGNANO: Yes, your Honor.

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REDIRECT EXAMINATION

BY MR. SIRIGNANO:

Q In reply to the last question -- might I have that question read.

(Question read.)

Q In what area are we speaking about when you answered that question, Mr. Walter?

A I talked about dentists, laboratories and government installations.

Q Now, Mr. Walter, I believe you answered before that with respect to the substantial lessening of competition in 1968, do I recall there were certain companies which were independent companies at that time which are no longer in business? Did you testify to that earlier?

- A That is right.
- Q I recall you stated SS White was one such company?
 - A Right.
- Q When that went out of business was competition lessened or increased?
- A That could be a matter of opinion. The same amount of salesmen were visiting.
 - The number of companies against whom you were

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then competing?

The number of companies lessened by one.

When General was acquired was conjetition in terms of number of companies lessened or increased?

Excuse me. May I back-track? When SS Wnite was acquired there were the same amount of companies; when General Dental was acquired there was one less, because the two were operated as one.

- When Sechter was acquired --
- The amount of salesmen --
- In terms of the number of companies, the number of companies competing against you?

A . It was the same amount of companies, but working under a combined set of rules, I would assume.

When Hebard Metro and Hebard Dental were acquired were the number of competitors in the area increased or decreased?

A The answer would have to be the same as before, that is, as far as the amount of salesmen are concerned for all practical purposes I would assume they were about the same; as far as sales policy and directives and so on, I would believe that they operated as one company, rather than as four or five.

Walter-redirect

- O When Guterman went out of business, did the competition increase or decrease?
 - A Decrease.
- Q When Dental Equipment execialists went out of business, did it increase or decrease?
- A When they discontinued the operation as we used to know it, it decreased but it increased when they went into the mail order business.
- Q Speaking of Dental Equipment Specialists, you mentioned at one time they sold equipment only. And that later they took on sundries. When did they take on sundries?
- A I can't recall, but I believe they were specialists in equipment only prior to my entering into the dental field.
 - Q You are speaking about in the thirties?
 - A Correct.
- Q During the period you were in business, were they not a full line dealer?
- A They added to their supply of sundry merchandise and gradually became a full line dealer.
- dealer, and please correct me if I am wrong, was not related to their having been only selling equipment, they were a full line dealer when they went out of business?

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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THE COURT: They really in substance changed their method of operation. They changed from a full line traditional dental dealer to a mail order house, isn't that in substance what you said?

THE WITNESS: Correct, sir.

Q Mr. Walter, Mr. Jinkinson read to you a long list of names. Generally, how did you become familiar with those companies?

A Over a period of years I have read many, many catalogs that are being issued by so-called catalog sales companies. I read the trade journals, dental magazines and of course I know some of them only by their trade ads in the magazines while other I know as direct competitors.

Q Of that very long list of companies, which of those companies do you know as direct compatitors?

A I can't recall all the names at the moment, but let us say those who have engaged in catalog sales because they are affecting our area or originating from this area.

What are the major companies as far as you know engaging in this type of operation of those companies which Mr. Jinkinson read or located in the ares?

There are three names and possibly now four well known to us.

What are those?

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mentioned before which originates under the company name of, Preferred, but seems to operate under a number of different names, By-Rite, Nationwide, Dental Wholesalers, etc., and Blank, which is owned by the same company that owns Central Dental and Industrial -- Interstate Drug and another one, Dental Wholesalers. They are the ones foremost in my mind.

Q They are all physically located in the New York area?

A Yes.

Q As far as any of these companies are concerned, you mentioned seeing advertisements in publications. To what extent was the basis of your acquaintance with these companies?

A The companies I just mentioned now?

Q Not these companies, taking the long list of names, how many of those names did you become familiar with on the basis of advertisements?

MR. JINKINSON: Your Honor, I think that is a misstatement of the record. I think the witness responded that he had seen advertisements in trade magazines concerning these companies and he had seen catalogs.

THE COURT: Mr. Sirignano, I don't believe he

could answer that question. If you are asking him for

MR. SIRIGNANO. I am not asking him for the

THE COURT: No, but you are asking how many of that long list of names did he say out of a magazine, and it would surprise me if the witness could do that. certainly couldn't.

A I can possibly say in number of the ones that had ads in the magazines, occasionally also will show or have a booth at the Greater New York Dental meeting, and I have passed their booth either there or at the Chicago mid-winter meeting which is another large dental meeting.

- Q In any instance, do you have any basis for knowing how much sales are being made by anyof those individual companies within the New York area?
- A I have absolutely no idea or no way of measuring what their volume is. I only know the annoyance value, but not the dollar and cents volume.
- Jinkinson put to you, you stated that they are of no significance in this market, do you recall that?
 - some of these names that were in the question?
 - Q I recall in the course of one of your answers, you

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b-5 Walter-redirect

spoke of one company as being of no significance in this market.

I am not trying to get you to remember the company, but do you recall giving that answer in response?

A Yes.

Apart from the companies you have named that are located in New York, can you recall a single name out of all the names he read to you which you would regard as being significant in this market?

A Possibly a company by the name of Veratex disposable dental products.

Any other companies that you recall out of that entire list which you would consider to be a significant factor in this market?

To some extent, possibly one company by the name of Lincoln Dental Supply out of Philadelphia.

Those are the only two that come to my mind right now.

MR. SIRIGNANO: Your witness.

THE COURT: Any recross?

RECROSS-FXAMINATION

BY MR. JINKINSON:

You understand, Mr. Walter, I wasn't reading you those names to determine whether they were major

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2	competitors. I asked you whether they competed with
3	you, is that right?
4	A That is the question?
5	. MR. JINKINSON: That is all, sir.
6	MR. SIRIGNANO: No further questions.
7	THE COURT: Thank you, Mr. Walter, you may be
8	excused.
9	(Witness excused.)
10	MR. SIRIGNANO: Morton Gutexman.
11	MORTON GUTERMAN, called as a witness on
12	behalf of plaintiff, having been first duly sworn,
13	was examined and testified as follows:
14	DIRECT EXAMINATION
15	BY MR. LUBLINSKI.
16	Q Mr. Guterman, are you here pursuant to the servi
17	of a subpoena?
18	A Yes.
19	Q Will you please state your present occupation?
20	A Presently I am what I call semi-retired. I don
21	realty have an occupation. My wife has a business and I
22	help her out.
23	Q When were you last employed, and in what capacity
24 -	A was president of Guterman Dental Supply
25	Company, Inc. and we closed July 27, 1972.

Walter-recross

-	-rkb-7 Guterman-direct
	Q Will you generally describe what the business
	of Guterman Dental Supply consisted of?
	A Dental supply business in the greater metropol
	area. We sold supplies or sundries, equipment, teeth,
,	precious metals, service and many services which were not
,	for sale, but which went along in accordance with an equip-
3	ment order.
,	In other words, one service the doctor paid
	for was a repair service. The other services came along
1	with the facilities of a dental supply house.
2	Q Would you describe what those services involve
3	a For instance, drawing and designing of plans
4	in the building of an office. Advising the dentist on
5	whether we thought a lease was correct for him as far as
- 11	

price went, length of time, whether the space was enough.

We worked with plumbers, electricians, carpenters, etc.,

while they were building an office.

Q At this time, will you please outline your

experience in industry including the positions you have

I started in the dental supply business in

1938 as a parttime employee at Guterman Dental and I worked
there originally and initially as the delivery boy and a

stock clerk and I finally, through the years, worked myself

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held from time to time?

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up to receiving clerk and shipping clerk and I spent, I think it was two years on the outside as a mechanic learning that end of the business.

Q Would you describe what jobs you performed as a mechanic, what your duties were?

A As a mechanic you carried a tool bag and I went along with a full-fledged mechanic until I learned and we were out in the field trouble shooting.

In other words, dentists would call in during the day as to what pieces of equipment were not functioning, and then we would be dispatched and go out and try to make these pieces function. When we could make them work, then we were mechanics.

THE COURT: Was this your father's business?

THE WITNESS: Originally it was my father's business, yes.

Q Will you continue to describe later positions that you held?

A After I was a mechanic, and during this period of time, just about that period of time, I think we were interrupted by World War II, and I want into the service.

Then I came back from service in I think it was June of 1945, and I went to work as the assistant and ultimately became assistant manager at the college branch which was a small

store we maintained next to the dental school.

THE COURT: Which dental school?

Street, and I worked there for a goodly number of years,
I would say probably tun years as assistant manager, and
when the assistant manager went up to the main office, I
became the manager and men were sen thown from the main
office to be trained under me to become good merchandise
clerks to be used up at the main office.

Through this period of time I also went out

one or two days a week as a salesman and I started, by

cold canvassing, I started three or four separate salesmen's

routes.

- What do you mean by cold canvassing?
- A In other words, without a given list of our dentists in the neighborhood, I would go through, like take long Island. I would take Merrick Road for 18 or 20 dental offices and make 18, 20 calls in a day.

Another time I would take another route, Sunrise Highway, for instance, and keep going in that manner and L ultimately brought forth, either three or four separate territories that given salesmen in the industry today are making what I consider good livings covering.

So, I think that I had a good coverage of both

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inside and outside experiencein the dental field.

What was the next position that you held?

A The next position, when my dad died, I became president of the firm and directed general policy, price policies, territories, areas where salesmen would go, whether we would or would not hire a new salesman.

I checked office plans which the draftsman drew up with the salesmen, and my equipment manager.

Just generally oversering them to see that they fit in with what I thought comported with our reputation.

MR. JINKINSON: Your Honor, I don't see what relevancy this has.

THE COURT: I assume he is going to ask him some question about the business and he is trying to show that he is qualified largely as an expert, is that it?

MR. LUBLINSKI: Yes.

THE COURT: I guess we have had enough of it.

Q Mr. Guterman, what products and services did Guterman Dental offer?

A By products, I assume you mean sundries. We handled all the generally known line of sundries made and manufactured in this country and we handled the top lines of dental equipment, also.

THE COURT: Did you sell teeth?

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1	rkb-11 Guterman-direct 148
2	THE WITNESS: We also sold teeth and precious
3	metals.
4	THE COURT: So you were a full line dealer?
5	THE WITNESS: We handled everything. A
6	full service dealer.
7	MR. JINKINSON: Not exactly full service. They
8	didn't furnish any service, I understand.
9	THE COURT: I beg your pardon?
10	MR. JINKINSON: They didn't furnish service
11	for installation.
12	THE COURT: Mr. Guterman, did you send people out
13	to repair equipment?
14	THE WITNESS: Yes. We had ten service men.
15	THE COURT: When you sold equipment at the
16	beginning when the dentist office was opened, did you supply
17	the mechanics who did the installation?
18	THE WITNESS: Yes.
19	THE COURT: I would think, Mr. Jinkinson, he would
20	be a full service dealer.
21	MR. JINKINSON: I misunderstood him in the
22	original testimony.
23	THE COURT: All right, let's go on.
24	What products are included in the category of
	equipment?

Guterman-direct

A Normally speaking would be units, chairs, x-rays, stools, cabinetry. At one time we had a fairly general rule that anything charged out at over \$100 would be charged out in an equipment charge book. This goes back a number of years when the prices of equipment were lower than they are today.

THE COURT: I assume there is no dispute that these are the principal items of equipment, isn't that so?

MR. JINKINSON: No, your Honor, I don't dispute that at all.

THE COURT: Then let's not repeat it any more.

I would have thought even if we didn't have a witness,
that would be it.

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MR. JINKINSON: I just dispute the fact that the testimony has no value.

THE COURT: All right, I will hear that later.

- Q M. Guterman, from what sources of supply did Guterman purchase the products it sold?
- A The products we sold were purchased directly from the manufacturers. The prime initial manufacturers.
- Q All the products or did you purchase products from any other sources?
 - A No. We purchased directly from manufacturers.
 - Q You mean no purchases from jobbers?
 - A No.
- Q What classes of customers did Guterman Dental sell to?
- A Primarily dentists, hospital institutions, which would be dental schools and all laboratories.
- Q Will you describe the basic physical facilities maintained by your company?

Maintained by your company in 1968 through 1970, at that time?

- A By basic facilities, do you mean the physical plant?
 - Q Yes.
 - A We had approximately 10,000 square feet on the

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equipment showrooms, a tooth counter, precious metals section. We had a merchandise area for dental students to come up and all of these areas were manned by people in that area.

In other words, in the equipment area we had an equipment manager and his assistant. The tooth department we had tooth clerks and so on.

As you proceeded toward the rear we had the drafting department where our draftsmen worked and then we had our service department where we had two dispatchers and an average of 10 mechanics that might go up and down through the years.

THE COURT: This is the main office.

THE WITNESS: Yes.

THE COURT: That was on 23rd Street?

THE WITNESS: 23rd Street.

THE COURT: And the college shop was on 25th Street?

THE WITNESS: It was on 23rd Street across the street but 15 years and on previously.

We ad a college branch at 23rd Street and a main branch at 53rd and then in 1959 we moved the whole thing down to 23rd Street and consolidated.

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THE COURT: Consolidated the two?

THE WITNESS: Right, right across the street from the dental school.

(Continuing) Then in the other area we had the merchandise department where we had special merchandise clerks.

. We had order pickers, billing department, and bookkeeping department and down in the basement we had about 2300 square feet of warehouse space.

That was for storage of large equipment.

Were any sales made to dentists or other customers directly in your location?

Yes, many dentists would come up and purchase supplies right over the counter, particularly dentists from the dentist school who were in the vicinity. Most of the business was done through salesmen.

The big sales when dentists came up were in equipment because they would come up to see the different types of equipment. We usually had anywheres from three to five different kinds of outfits on display.

In the same time period, on the average how many employees did Guterman Dental employ?

It averaged between 60, 65. It would go up or down, one or two here or there.

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What would be the significant categories of personnel by Guterman?

10 mechanics, two dispatchers an equipment manager, assistant manager --

What were the duties and responsibilities of the equipment manager?

THE COURT: When you ask a question, let's let him finish the answer then you can ask another question. It disturbes me and ultimately disturbes the witness when you interrupt.

You asked him what categories of personnel he had and Mr. Guterman was telling us. Let's finish it.

MR. LUBLINSKI: Excuse me, your Honor.

(Continuing) Then we had a draftsman. That was a variable of from one to two depending on the particular time of the year. There was myself, of course. We had two tooth clerks and a precious metals clerk who combined the job with the tooth clerk. Merchandise we had four or five billers and three order pickers.

The billers also answered telephone calls.

We had three men in shipping, two men in receiving. I think about 10 people in the bookkeeping department and there was a warehouseman plus a porter, and these would be the general day in and day out workers,

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We also tried to convince him to do a little
bit of cold canvassing which didn't meet with too much
success and to keep us advised of the new equipment
needed by his old accounts. Obviously, when he had,
what I would call a live one, he would bring him into the
house, to the showroom and either myself or the
equipment manager or whoever was working at that time on
the floor, would work with him and try to close a sale
and at the end of each day, they would send their orders in.

So, they should have been working five, and if

I was lucky, some worked six days a week, depending on

how hungay the salesmen were.

1	rksg 6 Guterman-direct 155
2	Q You c. rized these as outside salesmen?
3	A Because sy worked on commission.
4	Q How else did Guterman Dental go about
5	soliciting business?
6	A The men I had mentioned prior, the merchandise
7	clerks who answered the telephones, we like to consider
8	were also salesmen because obviously when a dentist
9	called in and asked for a package of film or something,
10	they would tell him what the rate was and try to build
11	the order and when he finished with what he wanted, to
12	try to find out what else he needed so they were inside
13	salesmen, actually, but they worked on a straight
14	salary. They were not divided by commission or anything
15	like that.
16	Q Youstated that they took orders. Did they ever
17	initiate telephone calls soliciting orders?
18	A No.
19	Q Were there any other ways in which Guterman
20	Dental solicited business from dentists or other
21	classes of ultimate consumers?
22	A Primarily through the outside salesmen, the
23	inside salesmen.
24	Of course, the equipment department worked

differently because we would make phone calls and we would

go out and follow up on any solicitation that seemed like

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There were three different methods of going after the business.

Q Once an order had been placed, how long would it take Guterman Dental to fill an order, to make delivery?

A A merchandise order?

Q Sundry?

A Sundry orders come into the house in a given day, if it got there by three, we would try to get it out the same day but certainly by the next day it would be out of the house on its way to being delivered.

Q And how long would it generally take to make a delivery of a piece of equipment?

A Well, a piece of equipment, if it were a compressor or a light or any of the smaller parts of equipment that were warehoused, like we would order six or a dozen of each just to keep, these would be delivered the next day.

Could take anywheres from three to six weeks to put an order together, to have it ready to be shipped. This would depend on the manufacturer's schedule delivery time.

Q What were the credit terms that would extend to this or any other customer?

A In 1968, 1969 and 1970, we carried very little of our own paper because National City had a low rate, so most of it was done through bank financing and in a case like that, we would receive the money usually at delivery.

That is a major order --

MR. JINKINSON: Your Honor, objection. The question has been answered by the witness. I don't know why he keeps going on and on.

THE COURT: I agree.

Next question.

Q When you operated Guterman Dental in the time period 1968 through 1970, within which geographical area did you make sales of dental products?

A The general metropolitan area, the greater metropolitan area, the five boroughs, Nassau County, Suffolk County, parts of Jersev, Westchester County and parts of Rockland County. Very minimal sales in the Connecticut area.

Q Were there any factors preventing you from selling throughout a wider area?

A Primarily personnel. If we had more salesmen and

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irrelevant and immaterial.

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MR. JINKINSON: Objection to it as being

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THE COURT: Yes. I will take it.

MR. JINKINSON: May I have a standing objection?

THE COURT: Yes, you may.

MR. JINKINSON: I object to the form of the question. I don't know what a major competitor is.

THE COURT: Mr. Jinkinson has a point. Let's see what you mean by major.

Q In 1968, what did you consider a major competitor, who did you consider?

A We considered primary competitors as major competitors, houses of the same ilk as we were. General Dental, SS White.

Q Please first give the standards of the definition what you then considered the major competitor?

A A major competitor would have been a full service dental supply dealer, one who carried the same services that we had.

THE COURT: And who did a big enough volume so you thought he substantially affected your business?

THE WITNESS: My volume.

Q Based on that definition of major competitor,
what companies did you consider major competitors of
Guterman Dental in 1968?

A We had General Dental, SS White on 42nd

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Street. We had Walter, Henry Walter. We had Sechter up in upper Manhattan and part of Jersey. We had Hebard up in White Plains and Hebard out in Long Island. There was Central Dental. Certified was up in the Bronx. I think this would be the bulk of the major competitors, if my memory serves me.

I may have missed one or two. If I had a list,
I could run right down and tell you.

0 What products and services did these operations generally offer?

A They offered the very similar products, very similar services to what we offered, full line supplies and sundries and that reminded me of another one.

DES was also a major competitor at that time. Originally they didn't have a full line of equipment, then they did.

Q In 1969?

A Yes.

The free services and advice we gave dentists, planning, all main things that went into making a full service dealer that would be used by the houses that I consider equal and major type competition for us in those years.

THE COURT: We will have to stop now for a few minutes. We will take an afternoon recess.

(Recess.)

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BY MR. LUBLINSKI:

Q Mr. Guterman, of the companies you mentioned before as your major competitors in 1968, which of those companies are no longer in business?

MR. JINKINSON: As of today?

MR. LUBLINSKI: As of today.

MR. JINKINSON: The man is semi-retired. I don't know how he can testify as to what is happening in the market.

THE COURT: He can tell us, if he can.

Q Mr. Guterman, as of July, 1970, when you were still the chief operating officer of PR Guterman Dental, which of the chief competitors you had named in 1966 were no longer in business?

A You mean no longer in business as individual companies?

O Yes.

A Well, General Dental Supply Co. had been purchased, SS White had been purchased, Hebard in White Plains had been purchased, Hebard in Long Island had been purchased; Certified in the Bronx went out of business; Sechter had been purchased; and Walter moved to New Jersey from Manhattan.

THE COURT: Walter was still in business?

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THE WITNESS: Yes, still in business, but not in Manhattan.

THE COURT: I take it just as competitive as before.

THE WITNESS: If not more so. They had better facilities.

Q . I show you Plaintiff's Exhibit 3 in evidence.

Have you ever seen this publication before?

A Yes, the ADTA had publications like this which they customarily put out.

Q I call your attention to pages 13 and 14 -MR. JINKINSON: Objected to as being
cumulative and repetitive, sir. May I speak to this,
your Honor?

THE COURT: Yes.

Isn't it both?

MR. SIRIGNANO: Your Honor, there is no question that the questions which we ask our witnesses will be cumulative and then repetitive. If Mr. Jinkinson is willing to stipulate that all the witnesses we will call will testify to the fact that they used these particular accounting manuals in accordance with the breakdown of the American Dental Association, I will drop this from our phase of the case, if we will

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stipulate that every repetitive question that is asked, that the answers will be the same as those of the former witnesses we will be glad to drop it. In fact, we won't even bother calling our next witness.

THE COURT: Mr. Jinkinson, is there any question that this trade association put out this book and that the members of the trade association used it?

MR. JINKINSON: There is no question they put it out. Of course, I don't know, I suppose they used it, but, of course, I still have my standing objection as to it being irrelevant, immaterial, and of no probative value to this case. I'm not going to stipulate it has any material value. I will stipulate that the trade association put it out, and if he was a member of the trade association he got a copy of it, and I would assume he used it.

THE COURT: That would be true of the other members of the trade association?

MR. JINKINSON: I assume so.

MR. SIRIGNANO: And it was the general practice of the trade association to do so.

THE COURT: I assume that is not contested, that it was the general practice of the trade association to use this book?

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MR. JINKINSON: I will stipulate they would use the accounting procedures stated in the book.

THE COURT: So we don't have to ask this witness about Exhibit 3, and you have your record made, Mr. Jinkinson.

identified as major competitors in 1968 and that had gone out of business by July, 1972 when you were still operating Guterman Dental, were there any other companies that had gone out of business or had a change in operation in this time period?

- A Yes, DES went out of business.
- Q What type of business had they been in?
- A They had a full service supply house.
- Q What did they become?
- A They became a subsidiary of a laboratory division of some company and went into mail order.

THE COURT: And then in 1972 I believe your company went out of business.

THE WITNESS: Yes, that is right.

- Q Would you estimate the number of dentists you come into personal and professional contact with in the course of your career?
 - A Thousands -- estimate how many thousands? Is

I was closely allied with New York University and they graduate a hundred and fifty men a year, so there is four years each time you are down there, plus the men that you meet that are practicing.

Q What did such contacts consist of?

A Well, whonever we made a contact with a dentist, of course, while some of it would have been social, primarily it was an attempt to establish a relationship in an area in which we could try to sell to the dentist, to the individual specific dentist — unless I misunderstand your question.

Approximately how many of the dentists that you have had such personal contact with have set up their practices without the assistance of a dealer?

A In my experience --

MR. JINKINSON: I don't know how he can know.

No proper foundation has been laid.

THE COURT: Well, I would assume unless there is evidence to the contrary that 99 per cent of the dentists who set up their office do it with the assistance of a dental dealer.

Is there any dispute about that?

THE WITNESS: That would be what I would say.

1	msg 6 Guterman-direct 166
2	THE COURT: There doesn't seem to be any
3	dispute about it. That seems perfectly logical and
4	normal.
5	Let's go on.
6	MR. LUBLINSKI: I was not aware of the fact that
7	thedefendant would stipulate to that fact.
8	MR. JINKINSON: I'm not stipulating to that.
9	The Judge said he knew it.
10	THE COURT: Unless the defendant offers evidence
11	to the contrary, I will make such a finding of the fact
12	that the vast majority of dentists starting out in
13	practice set up their office with the assistance of a
14	dental dealer.
15	MR. JINKINSON: It is within the interest of
16	the dental dealer to set them up that way.
17	THE COURT: Of course. I can't imagine there's
18	any dispute about that.
19	Let's go on.
20	(Plaintiff's Exhibit 21 marked for
21	identification.)
22	THE COURT: This is the question?
23	MR. LUBLINSKI: Yes.
24	THE COURT: You are not planning to introduce
25	these at this time?

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MR. LUBLINSKI: Not at this time

Is this the survey questionnaire that was sent to you by the government?

- Yes.
- Whose signature appears at the bottom of the form?
- It is my signature as president of Guterman Dental A Supply.
 - Who received this survey form at Guterman Dental? 0
 - It came to my desk. A
 - And who actually made the entries on that form?
- The handwritten entries along the side I made; the percentage entries I made; the figures that are written in, one of the boys that were walking by outside I called in to write down, because I have, as you can see, I have trouble with my handwriting, and I wanted them fairly clear, and he wrote them down. I don't even remember his name.

But I gave him the figures.

- What books and records were consulted to determine what admission you made?
- We have our certified account reports, year-end statements, et cetera. These are simply figures to pick out.
 - Did you actually consult those records yourself?

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A That would be the only way you could get any accuracy with something like this.

Of course, I rounded out the figures.

Q Which figures were those?

A For instance, where we have the total volume,
I rounded them off to the nearest thousand.

Q To the nearest thousand?

A Right, so that if you went through our records
you might find a few dollars and cents difference. But the
bulk of it will be exact.

Q I direct your attention to question 1. What information did you understand question 1 to be calling for.

A Well, they asked for a percentage of the company's total sales represented by equipment and chairs, units, et cetera, as we went through, sundries, which are the expendable items of merchandise, filling materials, et cetera, artificial teeth, which is obvious — they are fake teeth, artificial teeth — precious metals, and the service and repair department, which would relate to servicemen and repairs that were made, and I would assume that the questionreferred, asking these percentages, to the years that were being discussed on the questionnaire. That was my assumption.

Q What years?

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A 1968, 1969, 1970.

Q How much would those average breakdowns attributable to equipment, sundries, teeth and service and parts fluctuate from year to year?

A Most of these ratios would remain the same.

You could have a disturbing factor in the market that
would influence your equipment ratio. If a particular
manufacturer, let's say, Ridder, or any large equipment
manufacturer, suddenly came out with a great new piece
of equipment that went over with a bang, you could disturb
the ratio somewhat. If the country were going to go into
a war or something like that where they might feel equipment
was not available, you could disturb the ratio. But,
normally speaking, these ratios would average out very
close year in and year out.

- Q How about for the years 1968, 1969 and 1970?
- A Those ratios were there, just as I have stated here.

In answer to question one, I stated percentages.

That is what you are referring to as ratio?

- Q I'm just asking whether in those three years those ratios would have fluctuated?
 - A No, no particular reason for them to fluctuate.
 - O Mr. Guterman, have any new dental dealers come

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into operation since 1968 as full line dealers?

A Not to the best of my recollection. I would say not in the metropolitan area.

MR. JINKINSON: In what area?

THE WITNESS: In the greater metropolitan

New York area, I would say there were no specific new

dealers, full service dealers that came into being.

Q Since 1968 in the metropolitan New York area have any dental dealers at all started operations?

Any new dental dealers started operations or enter the market since 1968?

- A Up to today?
- Q Yes.
- A Yes.
- Q Would you name them.

A Let me think which way to start. Catalog Sales opened in Long Island.

There was another dealer, I believe, opened in Farmingdale. He is more of a wholesaler than an over-the-counter type dealer. I think that those are about the only two that actually opened.

Other dealerships have changed hands, but I think these are dout the only two that opened per se.

Q Are there any advantages that accrue to being part

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MR. JINKINSON: To whom? I object to the form of the question.

THE COURT: Yes, I agree. Sustained in form.

In 1968 were any of the dental dealers operating in the metropolitan New York area part of a chain of dental dealers.

> MR. JINKINSON: Objection. No foundation laid. THE COURT: Overruled.

Go ahead and answer.

of a chain of dental dealers?

Well, at that time a chain was forming through the Rower Dental Supply Company, which later became known as Helco; Dento Med, which is a laboratory set up that purchased DES. I believe their intent was to start a chain, but apparently they stopped just at that point.

Bailin Industries came into the market since 1968 and they purchased a dental supply dealer in Long Island. Then I think that is about all that occurred in chains, in a chain-type peration in this area.

When a dental dealer is purchased and becomes part of a chain of dental dealers, does he gain any advantages as a result of such an association?

MR. JINKINSON: Objection to the question as being

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foundation.

incompetent, irrelevant, immaterial, and having no

THE COURT: Well, I think the question can be put in a way that is less confusing. If I am owning my own business and I sell it to a chain and I continue as a paid employee, am I better off or worse off? I take it

that is not your question, is it? Or is that your question?

MR. LUBLINSKI: Yes.

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THE COURT: Well, then, I sustain the objection.

It is wholly irrelevant. It would depend on so many things.

It would depend on how much they paid me; it would depend on my pension; it would depend on my age; it would depend on my tax bracket. It has nothing to do with this lawsuit.

You couldn't possibly ask a question like that. So let's go on.

Q What is involved in starting in a business as a dental dealer?

A Well, of course, primarily you have to have a capital structure that you can put into the business, money. Then you have to get the dental lines, these lines that we keep talking about, different suppliers, different manufacturers of supplies that you have to sell in order to sustain a business and make it grow.

LD Caulk, SS White, Bosworth, all of the

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legitimate dental manufacturers in this country, which you need to sell.

Q Are these lines readily available or not so readily available to any new entrant into the market?

A No, they are not readily available either to a new entrant or to someone who has been in the business for a goodly number of years in some instances. That line has to be obtained.

Q Why are they so difficult to obtain?

A Speaking as a businessman I can't really tell you.

A manufacturer just doesn't recognize too many dealers.

For instance, in response letters if a dealer starts a business, a general response letter would be that they have ade mate coverage in that area, and when they look forward to needing new coverage they will go over the application again and re-study it. And this would be a standard stock answer, and that sentence would appear in just about every letter from every manufacturer who would turn the dealer down.

MR. JINKINSON: I move to strike that answer as not only being without foundation, but hearsay on the part of the witness.

THE COURT: I will take it for what it is worth.

Denied.

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If one started a business as a full-line dental dealer?

Starting business as a full line dental dealer would involve, I would say, a minimum of 50 to 60,000, because if this dealer had the major lines, the major

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equipment companies would all want equipment put on display, and this equipment is put on display by virtue of a dealer buying and paying for it completely. It is paid for. And if you display four manufacturers' equipment, you are pretty close to your \$30,000 mark, anyway, and you have to have at least 20,000 to put into merchandise on the shelves. This does not account for any physical plant construction, because this would depend upon whether the man wants a very fancy showroom or a less fancy showroom. This is strictly up to the individual, the physical structure.

Q This 50,000 figure then is short of that physical structure?

A That is right. I am talking just about merchandise and equipment.

Q You carried part of the categories when you comed up as Guterman Dental. How many items would you typically keep in stock in the course of such operations?

would be thousands of different items on the shelf. There is much duplication in manufacture. You have to carry so much of each manufacturer that you are representing to do a proper job, and I would say that would be several thousand different items on the shelf in any good dental supply house in the sundries department. 169a

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she have any financial interest in it?

	RKjg 2 Guterman-cross 177
	A She owns it.
-	Q Is that an operation which is putting out catalogs
	and selling by mail, by mail order?
-	A Not primarily, no.
-	THE COURT: I am a little confused. I thought
-	we said that Catalog was a corporation and that the stock
-	was owned by Ms. Alter.
-	THE WITNESS: Right.
-	THE COURT: Them I thought you said your wife
-	owned it.
	THE WITNESS: I am not a lawyer, your Honor,
	so maybe I answered the question incorrectly. The stock
-	is owned completely and solely by Ms. Alter.
-	THE COURT: If that is the case, how is your
-	wife interested in it, how does she happen to own it?
-	Is Ms. Alter your wife's name?
-	THE WITNESS: That is her maiden name. I had
-	to answer the question two ways.
-	Q Do you have any salesmen employed?
-	A I don't have anybody employed.

Q Does: htalog Sales have any salesmen employed who are contacting dentists?

A From time to time when I am there I have seen salesmen, but not full time salesmen. I have seen people

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that worked inside go outside and call on dentists.

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Q Do you know or don't you know whether Catalog Sales hire any salesmen to call upon dentists for the purpose of selling them dental supplies? And if you don't know, say so, and if you do, say so.

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A I don't know.

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Q How do you know that part of the sales of Catalog are by mail and part by direct? How do you know that?

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A If I sit down and discuss somethingwith my wife during the evening and she asks me a question, I will give her an answer, and if she asks me "Should I send out catalogs or should I try just calling dentists on the phone?", which incidentally I think is their main contact, I will give her an answer to this.

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Q You will tell her how to run the business?

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A No. That is not what I said.

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Q You would give her your years of advice as to how she should run the business.

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A I will give her the benefit of my years of advice.

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Q Has she sent catalogs to the dental profession advertising dental products for sale?

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A Yes.

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Q How wide a coverage has that been?

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A That was, to the best of my knowledge, primarily

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1	RKjg 4 Guterman-cross 179
2	to the old, original Guterman accounts, and I believe that
3	she sent out experimental flyers to another state.
4	O There were none sent in the Manhattan area?
5	A Yes. This is what I am saying. The old Guterman
6	accounts primarily.
7	Q Just limited to that?
8	A Pretty generally, I would say.
9	Q Do you still have the business records of the
10	Guterman dental business?
11	A This depends on which business records you refer
12	to.
13	Q Profit and loss statements.
14	A Some of them, yes.
15	Q Not all of them?
16	A Not all of them.
17	Q Do you know what years are missing?
18	A No.
19	Q Do you have them for the last five years?
20	A I couldn't give you an honest answer because the

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- I couldn't give you an honest answer company went into bankruptcy and a lot of the records were taken over by the trustees.

In other words, I am not evading an answer, but whatever is available we can produce.

Where are they stored, those that are available?

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1	RKjg 5 Guterman-cross 180
2	A I would have them at home.
3	Q What is your home address?
4	A 40 Kennedy Avenue in Rockville Centre.
5	MR. JINKINSON: May I have Exhibit 21, please?
6	Q I hand you this Exhibit 21, which you have seen
7	before. Did I understand you correctly to say in the
8	beginning of your testimony that you did sell or make some
9	dental sales for dental products in Connecticut?
10	A Yes.
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13	years 1968, 1969 and '70 you were asked in No. 5, "Descrip-
14	tion of other geographic area in which company sells," and
15	you didn't fill in "Connecticut," did you?
16	A We didn't do enough sales in Connecticut to even
17	make a percentage. I think we had something like
	Q Whether percentage or not
18	THE COURT: Wait. We will never get this down
19	on the record. The witness is giving an answer and the
20	examiner is asking a question at the same time. The reporter
21	can't possibly do that.
22	Had you finished your answer, Mr. Guterman?
23	THE WITNESS: I was going to add that we had
24	less than a handful of accounts in Connecticut.
25	THE COURT: Next question.
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MR. JINKINSON: I move to strike that out as not being responsive to my question, and I will ask the question again.

Q Nowhere in Exhibit 29 and in paragraph 5 did you have any sales in any geographic area other than the listed geographic areas in paragraph 4, is that right? In other words, paragraph 5 is blank.

A Yes.

Q Yet you made sales outside of those areas shown in paragraph 4; whether it is a handful or no matter what it was, you did make some sales, isn't that right?

A Yes.

Q In paragraph 3 of this Exhibit 21 you didn't list the dollars for sales to dentists in '68, '69 and '70; they are all blank, aren't they?

A Yes.

Q Is that because you didn't have those sales figures to put in there?

A It says right here that we have no breakdown of those figures. That is why I didn't put them in.

Q You couldn't figure out what your exact sales were for each of tho-e categories in paragraph 3, could you? You couldn't tell from your records?

A Not from the records I had at that moment, no.

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O In paragraph 2 of that exhibit you said you rounded those figures off, rounded it to the nearest thousand. Did you mean to the nearest ten thousands or hundred thosuand?

A To the nearest thousand.

Q Actually you had no records of your own which would reflect that amount or anything near it; this was your best estimate and judgment, wasn't it?

A I received this questionaire from the Government and I answered it as fully and as honestly as I could with all the company records available to me at that time.

THE COURT: For these particular items you didn't have any records and the answers represent your best judgment or your belief rather than a reflection of some book or record?

THE WITNESS: No, sir. He is asking about No. 2 now, which I took from our records.

THE COURT: You took them from the records.

THE WITNESS: Yes.

Q Mr. Guterman, I will ask you to produce those records in this court, the records which will show your sales for the year 1968, 1969 and 1970. I want you to produce those tomorrow morning.

A I don't know if I could do it by tomorrow morning.

1	RKjg 8 Guterman-cross 183
2	If I have them, I will be glad to get them here.
3	Q Do you mean that you had them at one time but
4	destroyed them after you made this questionaire up? Is that
5	what you are telling the Court?
6	A No, that is not what I am telling the Court. What
7	I am telling the Court is that we went into bankruptcy, and
8	when you go into bankruntcy, trustees end up with all your
9	records.
10	Q Did you go into bankruptcy after this questionaire
11	was filled out or before?
12	λ I went into bankruptcy in July of 1972.
13	THE COURT: When was this questionaire
14	THE WITNESS: January 11, 1972.
15	THE COURT: So it was after this was filled out.
16	Mr. Guterman
17	THEWITNESS: If I had these records, I would
18	be glad to bring them.
19	THE COURT: Why don't you look for them and take
20	your time and you could tell us how you make out.
21	THE WITNESS: This is what I meant. I can't
22	guarantee to have them here tomorrow morning.
23	THE COURT: Let's finish everything except the
24	records. Then we will give Mr. Guterman time to look for the
25	records.

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Q These percentages that appear in paragraph 4 as to the areas which you sold your dental products for the years '68, '69 and '70 are approximate percentages?

A Yes.

BY MR. JINKINSON:

- O These are your best estimates?
- A Best estimates.
- Q And they are not based upon any records you have?
- A No. I would say they were the best estimates between myself and my controller at the time as to where our preponderance of sales were and then a breakdown on that point.
 - Q Under 4A, fifty per cent.
 - A Yes.
- Q The next figure is what? Twenty per cent or twenty eight percent?
 - A The Rockland and Westchester is twenty per cent.
 - Q Twenty per cent.
 - A Right.
- Q The next one is twenty eight and the next one is two, is that right?
 - A Right.
- Q So we understand each other, Mr. Guterman, you are going to bring all the records you have for the years 1968,

1	RKjg 10	Guterman-cross	185
2	'69 and '70	that you relied upon.	
3		THE COURT: No. You only asked	him for one
4	item, item	2.	
5		THE WITNESS: Where I got the fi	gures.
6		THE COURT: Item 2. He was to	look for those
7	and he is g	oing to look for those records. A	nd now you
8	are asking	him about all other items?	
9		MR. JINKINSON: For the three year	rs '68, '69
10	and '70.		
11		THE COURT: Is that what item 2	says?
12		MR. JINKINSON: Yes.	
13		THE COURT: If it does, yes.	
14		Now are you broadening the reques	t to include
15	other items	than item 2?	
16		MR. JINKINSON: I thought, if it	wasn't too
17	much of a b	ourden, he would bring all records	that he relied
18	on in filli	ng out this questionaire.	
19		THE COURT: Can that be done, Mr.	Guterman?
20	We will giv	e you some time. We will talk a	boutthat
21	later, when	we finish.	
22		THE WITNESS: All right.	
23		THE COURT: Yes, he thinks that	is feasible.
24		MR. JINKINSON: No further quest	ions.
25		THE COURT: I suppose, Mr. Lubli	nski, you want

RKjg 11 2 to wait until we clear up the question of the records? 3 MR. LUBLINSKI: 5 6 to what records you could find? 7 8 9 10 11 12 that long. 13 14 15

Yes. THE COURT: Mr. Guterman, how long do you think it would take you to make a little report to us as

THE WITNESS: If my memory serves me correctly, these records should be at my home. It is just a matter of going through them. I would say I should be able to give the Court an answer as to whether I have them or not within the next two or three days, if it were to take me

The reason I mention the time, I had just moved and things are a little bit upset at the new house.

THE COURT: Could you come in the day after tomorrow morning? Do you think that is time enough? THE WITNESS: I would prefer, if possible, Thursday.

THE COURT: All right, Thursday, October 18th, and we will be in this room, 102, and I suggest you come at 9.30 in the morning.

Do we have an extra copy of this exhibit that we can give the witness?

MR. LUBLINSKI: Yes, your Honor.

THE COURT: Here is an extra copy of the

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exhibit which you can take with you, and the idea is to bring

for you.

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THE WITNESS: Yes.

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here all of the records that you can find on which you relied in answering any item on this questionaire, any item at all, and then you can tell us to what extent you have succeeded in locating records on which you relied in filling out this questionaire and what records you don't think you could find because of the difficulty of the trusteeship and so forth.

THE WITNESS: I have only one other question

What hours beyond 9.30 could I get here?

THE COURT: You mean that is too early for

gery and I usually sleep until eight in the morning. I don't commute by Long Island Railroad, so I don't know their full schedule.

THE COURT: What about 2.15? Is that more convenient for you?

THE WITNESS: 2.15 or 10.30. In other words,

I will try to get in as close as I could to 9.30.

THE COURT: No. We will plan on it. Tenthirty, is that right?

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companies?

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Ar At present I am vice president with the Equipment Corporation, president of the construction company, vice president of interiors. Thold mojoffice with the

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THE COURT: Of course.

standing objection.

MR. JINKINSON: Thank you very much.

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A The physical facilities are about 9700 square feet of space that we occupy at the address I gave before. We display dental equipment at this location and we house the supplies that we sell to the dentists.

We have salesmen that are in the field that sell the supplies and dental equipment that we carry; we have inside personnel that pick these orders, ship them to our customers; we have a service department that maintains the dental equipment that our customers use.

Q Would you state your own professional background in the dental product industry, including the work you have done, the companies with whom you have been employed, and your present duties?

Dental Equipment Specialists. They were located in

Manhattan. I was hir d there as a stock clerk and filling

orders, and went on to becoming a salesman for them of

supplies and equipment. I held the position of merchandise

manager, equipment manager, servicing manager. When I

left them in November of 1970 I was vice president, and

that is when I joined Durable Dental Equipment Corporation.

- Q In what capacity?
- As an owner, and I function as equipment manager.

 THE COURT: I take it Durable would be described

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as a full line dealer?

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THE WITHESS: Yes, it would.

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Q Could you describe what a dental dealer is?

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A A dental dealer would be one in my opinion that

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is in a position to service its customers with all their

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needs, such as supplies, which would be considered the

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sundries, their equipment needs, their servicing needs,

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someone that would have sales personnel that would call on

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these accounts, make them aware of the products that are

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available through innovations in the industry.

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Q Are there both full line and non-full line

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dealers?

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A The question of full line, a minute ago I answered yes, that we are a full line dealer. I feel that we are.

There are certain lines that we do not carry, manufacturers' lines which we do not have the relationship with the manufacturer; we can order direct --

THE COURT: You carry a competing line in that case?

THE WITNESS: That is why I consider us a full line dealer. We can compete in most areas, yes.

Q Could you tell me what you consider to be a non-full line dealer?

A A company that either sells just equipment or a

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Krochmal - direct

company that sells just supplies, that does not offer the services, such as the mechanical services available for the repair of dental equipment or the personal services of a salesman.

THE COURT: I think unless there is some dispute about it we really don't need any more of this. I am prepared to say that a full line dealer is one who sells equipment and services the equipment, sundries, teeth, and precious metals.

THE WITNESS: We do not sell teeth.

THE COURT: You do not?

THE WITNESS: No, we do not.

THE COURT: Then I am afraid you don't fit my definition of a full line dealer, but you almost, because you sell precious metal.

THE WITNESS: Yes, we do.

THE COURT: Sundries?

THE WITNESS: Yes.

THE COURT: Equipment?

THE WITNESS: Yes.

THE COURT: And you service the equipment?

THE WITNESS: Yes.

THE COURT: Mr. Weiss, the defendant probably says this does not have anything to do with it. That is

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full line dealer, we carry thousands of items.

THE WITNESS: Yes, if you consider us a non

THE COURT: I would think the answer would be from

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one to a hundred thousand, maybe. I can imagin a dealer who sells just one item, but if he sells it to dentists and dental laboratories, I think he would be a dental dealer. He would have a very limited line.

Q From what sources does your company purchase dental products?

A · From manufacturers.

1	desb -1	Krochmal-direct 20	6
2	Q	Do you ever purchase anything from importe	ers?
3	λ	No, we don't.	
4	Q	Do you ever purchase from jobbers?	
5	A	To some extent.	
6	Q	Could youtell me what percentage of your p	our-
7 8	chases are	from manufacturers and what percentage from	1
9	jobbers?		
10	Α	I'd say about 80 to 85 per cent of our pur	chases
11	are through	manufacturers. The rest jobbers.	
12	Q	Does your company make sales directly to	
13	dentists?		
14	A	Yes, we do.	
15	Q	Do you make sales directly to dental labor	ratories?
16	A	No, we don't.	
17	Q	Do you make any sales to dental laboratori	les?
18	λ	Minor amount, yes.	
19	Q	Does your company make sales to Government	agencie
20	or institut		
21	. A .	On the supply level, yes.	
22		THE COURT: Why don't you sell to laborator	ies?
23	I am just c		
24		THE WITNESS: We found that from our own ex	
25		oduct line that they require, the gympsum p	
	are bulky.	There is a lot of problems with chipping.	We

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1	desb-2 Krochmal-direct 207
2	don't want to carry teeth as an item.
3	THE COURT: They would be very much interested
4	in teeth, wouldn't they?
5	THE WITNESS: Yes. More so than the dentist.
6	THE COURT: Yes.
7	Q Are you familiar with Rocky Mountain Orthodontics?
8	A Yes, I am.
9	Q Are you familiar with Ormco?
10	A Yes, I am.
11	Q What kind of companies are these?
12	A Both of these are primarily in the manufacture
13	and sale of orthodontic supplies, specialty items as we
14	would call it.
15	Q Do you sell the same specialty items that they
16	sell?
17	A We sell in terms of orthodontic supplies are
18	the products that a general practitioner would use in doing
19	some minor orthodontic work. We don't carry the full
20	line of all orthodontic specialty items, no.
21	THE COURT: Tell me, is orthodontia a specialty
22	now so that a dentist could be an orthodontist and nothing
23	else?
24	THE WITNESS: That is a field of specialization
25	where he would do nothing but the orthodontia.

2	THE WITNESS: He might do, on minor cases,
3	minor t-oth movement. But if there is any substantial
4	cases he would normally refer it out.
5	THE COURT: To a specialist?
6	THE WITNESS: Correct.
7	Q Are you familiar with Rubinstein Dental Equip-
8	ment Corporation?
9	A Yes, I am.
10	Q Could you tell me what products they sell, if
11	you know?
12	MR. JINKINSON: This is all hearsay, your
13	Honor.
14	THE COURT: Yes, I agree. Go ahead. Can you
15	tell what products Rubinstein sells?
-16	THE WITNESS: After 15 years in the business
17	I know them well enough. They sell dental equipment. They
18	sell and service dental equipment. They don't carry supplies.
19	Q How long have they been in the business of
20	selling and servicing dental equipment?
21	A I couldn't tell you how long, but it is longer
22	than I have been in the field and I have been in the field
23	13 years.
24	Q Could you state whether or not in the course of

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your work you have been made aware of the prices that are

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A The question as I just heard it is whether or not we were aware of the pricing in the areas that we deal, geographic area?

Q Yes.

A We try not to go any further than about 75, 70

1	desb-5 Krochmal-direct
2	miles away from our office in just about any direction.
3	Q Is this the geographic area in which you compete?
4	A Yes, it is.
5	Q And do you try to be aware of prices of com-
6	petitors in the area in which you compete?
7	A. Yes, we do.
8	Q. In determining the prices you charge would you
9	take into account, for example, the prices charged by
10	a dental dealer in Westchester?
11	· A Yes, we would.
12	Q What about in Hackensack?
13	A If we were to deal there, yes.
14	Q And in Philadelphia.
15	A We don't go that far.
16	Q From your experience could you tell me what type
17	of company you would have considered to be a major competitor
18	in the years 1968, 1969, and '70?
19	MR. JINKINSON: Objected to as being
20	irrelevant and immaterial, your Honor. The issue in this
21	case is not full line dealers. The issue in this case is
22	all sales made within the area.
23	THE COURT: I agree, but I will take it.
24	A Could you go back with that question again, please
25	Q Well, the question that I asked was not in regard

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to full line dealers at all. The question was would you tell me what type of company you would have considered to be a major competitor in 1968, '69 and '70?

A Any company that had a sales volume of about \$750,000 or over I would consider a major competitor in this area.

Q Can you name any companies that were major competitors in 1968, '69 and '70 that are no longer major competitors?

A Dental equipment specialists would be one, Guterman, Certified Dental would be a third. There are other companies that were around that are now one.

Q Would you explain that?

A Companies such as S. S. White, General -THE COURT: Do we need this? Isn't this repetitious?

MR. JINKINSON: This is purely cumulative, your Honor.

THE COURT: Yes, it seems to to me.

Mr. Jinkinson stipulate S.S. White --

THE COURT: Oh, no, no, let's go on. Let's repeat then. I get the picture but if you want to repeat then let's repeat.

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All right, go ahead, I won't say anything more but it just seems to me that we are just wasting time.

Go on.

Q Can you name any major companies that were major competitors that are major competitors today that were not so in o968, '69 and '70?

- A Any major competitors that exist today --
- Q That were not so in '68, '69 and '70.
- A I couldn't say any new competitors other than Dale Pharmaceutical that took over from Central Denta.

 Central was a factor in 68, 69 and 70.
 - O They took over an existing company?
- A Yes. That is the only kind of changes in terms of new companies that I have seen.
- Q Could you tell me whether entrance into the market is easy or difficult?

MR. JINKINSON: Objected to as calling for an opinion of the witness.

THE COURT: I agree. I know what the answer is, but we are going to get it. Let's have it.

A I would say it is difficult because of the moneys
that are needed, the relationships that you have to
establish with manufacturers to get their lines, personnel.

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It wouldn't be easy.

Q Have you experienced any of these difficulties yourself?

A We have had problems in getting some of the lines, yes. And getting personnel.

THE COURT: Salesmen?

THE WITNESS: Sales personnel, service personnel.

THE COURT: The mechanics?

THE WITNESS: Yes. Extremely difficult.

Q Are there any advantages for a company to be part of a chain of dental dealers rather than independent?

MR. JINKINSON: Objected to, your Honor.

THE COURT: That objection is sustained. I have had enough of this. Let's go on.

Q What are house brands?

A House brands are products that are made by a manufacturer, and I call it private labeling, where the name of the dealer that is selling the product appears on it.

Q Do you know of any firms in the dental business that use house brands?

Yes. One significant one would be the Healthco

THE COURT: Is the brand the brand used by the dealer?

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Krochmal-direct

THE WITNESS: Yes. We don't have an opportunity to sell the same brand.

THE COURT: No, but do you use any house brands?
THE WITNESS: No, we don't.

THE COURT: Manufacturers could, if they wanted to, give you a product with your own private label?

THE WITNESS: If we could order it in those quantities, sure.

THE COURT: All right.

Q Couldyo u tell me who the major mail order houses are that compete with your company?

A The names, I don't know the extent of their business, but the names that I see most frequently would be Henry Schein, Darby-Perry, and Silverman Catalogs.

- Where are they located physically?
- A Henry Schein is in Queens. I don't know the location of Darby-Perry. Silverman's is out of Philadelphia.
 - In what product area do they compete?
 - A Sundries, primarily.
- Q Do mail order houses have any competitive advantages over other dental supply houses?

MR. JINKINSON: Objected to, your Honor, because the witness -- no proper foundation has been laid. It has not been shown this witness knows anything about mail order

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NOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

FOLEY SQUARE, NEW YORK, N.Y CO 7-4880

houses.

THE COURT: I will permit it.

A I would feel they would have it because of pricing and purchasing power perhaps.

Q During the course of your association with the dental product field, have you had any personal contact with dentists?

A Yes.

Q Would you please describe approximately the number of dentists that you have had personal contact with and the extent of these contacts?

A In the last 13 years I am sure I was in contact with at least a thousand dentists a year. My contact has ranged over the years from selling the sundry items, calling on doctors at their own offices and selling them the products that they would use routinely, or taking new dentists, helping them find locations, having plans drawn for them through our company for a new office, selections of equipment, help them in terms of establishing financing for that equipment or for the construction of that office.

Q How many of the dentists with whom you have had contact have set up a dental practice without utilizing the services of a dental dealer?

A None to my knowledge without the use of a dental

1	desb-11 Rrochmal-direct
2	supplier, dealer.
3	Q How many of the dentists with whom you have had
4	contact did not make any purchases of dental equipment
5	from a dental dealer?
6	A Did not make any? None.
7	Q How many of the dentists with whom you have had
8	contact relied almost exclusively on dental dealer or
9	dealers for the purchase of the requisite equipment and
10	services in setting up the practice?
11	MR. JINKINSON: Objected to as calling for
12	an opinion and conclusion of the witness and hearsay.
13	THE COURT: I know what the answer is, but we
14	take it.
15	A I don't know of any dentists that could set
16	it up without using dental dealers and suppliers.
18	THE COURT: Over 99 per cent would you say?
19	THE WITNESS: Yes.
20	THE COUR T: Of course.
21	Q Can you estimate the number of dentists who have
22	newly entered practice that you have been in contact with
23	since 1970?
24	A The number of dentists that have opened new
25	practices in 1970?
	Q That you have been in contact with.
	199a

1	desb-12	Krochmal-direct 217
2	A	100, 150.
3	Q	And since then?
4	A	Since 1970, you said?
5	. 0	Yes.
6	A	Since 1970 brings us up I don't follow what
7	you mean th	en.
8	Q	I asked you first about 1970. Now I am asking
9	subsequent1	у.
10	. A	I am sorry. I'd way brand new dentists that we
11	open up a y	ear would number about 50 a year.
12	Q	Thank you. From approximately how many manu-
13	facturers d	oes your company make purchases
14		MR. JINKINSON: Objected to as immaterial and
15	irrelevant,	your Honor.
16		THE COURT: I will take it. Overruled.
17	A	80 or 100 different sources of supply.
18	Q	Now, does your firm sell any products that are
19	not peculia	rly used by dentists? In other words, multi-
20	purpose ite	ms?
21	A	There are items that we sell that can be purchase
22	elsewhere b	y a dentist. Is that what you mean?

What percentage of your dollar volume of sales

Yes.

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1	desb-13	Krochmal-direct 218
2	is represen	cross ted by such sales of multi-purpose items?
3	3	I'd say for last year it came out to maybe 7% or
4		
5	80 per cent	
6		THE COURT: Those paper cups is a good example,
7	isn't it?	
8		THE WITNESS: Yes.
		THE COURT: Do you sell towels?
9		THE WITNESS: Yes.
10		THE COURT: And these napkins that dentists put
11	around you?	
12		THE WITNESS: I am not aware of those being sold
13	elsewhere	I was thinking of some other things.
14	cibewnere.	
15		MR. WEISS: You may inquire.
16	CROSS-EXAMI	NATION
17	BY MR. JINK	INSON:
	- Ο	Mr. Krochmal, is Marvin Cutler Associates a
18	competitor	of yours?
19	A	Strictly in the terms of dental planning.
20	Q	He is a competitor, that's the question.
21		Yes.
22	· Q .	Now, you say that mail order houses have a price
23	advantage.	
24		
25	A	A selling price, yes.
	Q	Selling price advantage?

1	desb-14	Krochmal-cross 219
2	λ	Yes.
3	0	But not a purchasing price advantage?
4	A	Conceivably.
5	· · · Q	But you don't know?
6	A	I don't know for a fact, no.
7	Q	You have never seen an invoice?
8	A	No, I haven't.
9	Q	You made no inquiry about it?
10	A	No, I haven't.
11	Q	Now, they do have a selling price advantage?
12	A	Yes, they do.
13	Q	Now, they employ no salesmen, do they?
14	A	No, they don't.
15	Ω	You do employ salesmen?
.16	Α	Yes, we do.
17	Q	What is the average salary that you pay one of
18	your sales	nen?
19	λ.	\$15,000 a year.
20	Q	\$15,000. Some of them make more?
21	Α	Yes.
22	Q	That is the average. How many do you have?
23	λ.	We have five.
24	Q	Pive?
25	A	Yes.

the special section is

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Krochmal cross

Q Now, that is \$75,000 of expense that the mail order house doesn't have?

A Correct.

desb-15

THE COURT: Do the salesmen get a commission in addition to the salary of which you speak?

THE WITNESS: Some of our salesmen work on a straight salary basis, and some work on a draw against commission.

Q So that is one item of overhead that they don't have in their operations?

A That is correct.

Q That is probably the biggest item and the reason they can sell cheaper and do sell cheaper?

A I would also consider a service department a significant item that they don't have. That is even more significant than the salesmen. That is in overhead.

Q That is another item and reason why they can sell cheaper than dental house?

A I would say so, yes.

Now, you say that you have problems in getting some lines.

A Yes, we do.

Q Have you any information, evidence of any kind or nature that the reason you can't get those lines is

1	desb-16	Krochmal-cross 221
2	because	of Health Co.?
3	A	Health Co. specifically?
4	Q	
5	A	No, I do not.
6	Q	· · · · · · · · · · · · · · · · · · ·
7		You say D.E.S. went out of business?
8	A	That is correct.
9	Q	They are now a mail order house, aren't they?
	A	D.E.S. as a dealer has gone out of business as
10	far as I	am concerned.
11	Q	As a dealer, but he is still in the dental supply
12	business	through a mail order house?
13	. А	Yes, they are.
14	Q	And he is competing with you?
15 -	A	I don't know the area they cover.
16	Q	
17		You never have seen their catalogs?
18		No.
19	Q	You don't know whether they send catalogs to
20	every de	ntist in the city?
	A	No.
21	0	You have never seen one in your territory?
22	Α.	Yes.
23	Ω	Which I believe you say is a 70 mile radius around

A That's correct.

the location of your plant?

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1	desb-17	Krochmal-cross 222
2	. Q	You say Guterman went out of business.
3	A	Yes.
4	Q	Do you know Mr. Guterman?
5	· A ,	Morty Guterman, yes, I do.
6	Q	Do you know that he is now back in business with
7	catalog sal	es?
8	A·	No, I dn't know that he is back in the business
9	with catalo	g sales. I am aware he came back into the busi-
10	ness.	
11	. 0	So if he is back in business with catalog sales
12	he is not o	out of business, is he?
13	A	Guterman Dental went out of business.
14	Q	But he started a new company and he is still
15	selling den	tal supplies in the Manhattan area, isn't he?
16	A	Possibly, yes.
17	Q	What do you mean possibly?
18	<u>A</u>	I haven't run into it so I don't know.
19	9	Now, Certified you say went outof business but
20	Certified v	vas purchased, bought out by Central Dental, weren
21	they?	
22	, А	I don't know. What does "bought out" mean?
23	0	You say they went out of business.
24	A	As far as I am concerned they went out of
25	business.	

1	desb-18	Krochmal-cross
2	Q	Central took over their salesmen, didn't they?
3	λ	Yes.
4	Q	And some of their personnel?
5	A	That is correct.
6	Q	YOu do consider salesmen to be an important part
7		siness, don't you?
8	A A	
9		Extremely important.
10	Q isn't it?	The singlemost important part of your business,
11		
12	A	Very important part of our business.
13	0	You wouldn't agree it is the singlemost important
14		r business?
15	> 1 A	I wouldn't agree or disagree. It is important.
16	There are n	many factors that are important in our business.
17	Q	Now, you say that Rubinstein to your knowledge
18	sells only	equipment.
19	λ	That is correct.
20	Q	Name me one other dental dealer in the Manhattan
21	area who se	ells only equipment.
22	A ,	Today or ever?
	Q	Today.
23 .	A	I don't know of any other.
24	Q	You know the prices of mail order houses operating
_ 25	outside you	r area who would ship into your area or canvass

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your area rather?

A Do Iknow of any of them?

Q Yes.

A I don't know of their names, but I am sure there are some.

Q Do you know their prices?

A No, I don't. Not right now.

Now, Mr. Krochmal, your business has increased from 1971 to 1972 in the sale of equipment from \$530,000 to \$1,050,000, is that correct?

A That is correct.

Q And your supplies or sundries has increased during that same period from 700,000 to \$900,000?

A That is correct.

Q Does a dentist who desires to purchase equipment and/or sundries have fewer or more sources of supply for these products in the last ten years?

A You speak of a dentist in this area, our area?

Q Yes.

A I would say that his choice -- it is varied. It is a difficult question. There are less dealers for him to go to in this area, but there are other things like mailorder for sundry items that he can go to.

1	desb-20 Krochmal-cross 225
2	Poes he have more or less sources of supply?
3	A In terms of names to buy some items he probably
4	has more.
5	MR. JINKINSON: I have no further questions.
6	THE COURT: Any redirect?
7	MR. WEISS: Yes, your Honor.
8	REDIRECT EXAMINATION
9	BY MR. WEISS:
10	Q Did you say that sales personnel were an import-
11	ant part of your business?
12	
13	A Yes.
14	Q Was it an important part of the business of
15	Certified?
16	A Yes, it was.
17	MR.JINKINSON: Your Honor, I object. It is
18	calling for hearsay evidence.
19	THE COURT: There isn't the slightest doubt in
20	my mind that saleamen are highly important factors in the
21	business of dental dealing, and why it is repeated I
22	don't know. I will take it. I haven't the slightest doubt
23	about the point. It seems to obvious.
	All right, let's go on.
24	Q Do you know what happened wit hthe salesmen from
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A Many of them were employed by Central Dental.

Some went elsewhere.

Q Were they employed by anybody else?

A Some were -- Central -- other than Central Dental?

Q Yes.

Certified?

A Yes.

Q Who?

A Walter Dental has employed one, Health Co. has employed -- that's the only one specifically I know that was employed by someone outside of Central, in terms of sales.

MR. WEISS: Thank you.

THE COURT: Any recross?

MR.JINKINSON: No, your Honor.

THE COURT: Thank you. You may be excused.

(Witness excused.)

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HERBERT RUBINSTEIN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BONETA:

- Q Mr. Rubenstein, what is your present occupation?
- A I am president of Belvac International Industries.
- Q Will you describe the nature of the business of Belvac?
- A Primarily it has several components, one being Central Dental Supply Company, which is a full service dental dealership; the other is Pyramid Dental Corporation, which is a manufacturer and distributor of gold products.
 - O Is Central a full line dental dealer?
 - A Yes, it is.
- Q What is your professional background in the dental industry?
- A Well, I have a Master of Business Administration from Ohio University and I have been in the dental field for approximately 30 years.

the COURT: I take it you don't have anything to do with Rubenstein Dental Equipment Company?

THE WITNESS: No, that is my cousin.

THE COURT: I was struck by the similarity of names.

money.

case.

THE WITNESS: We are related by blood, but not

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Q Mr. Rubenstein, you are presently involved in litigation, or your company, against the defendant in this

MR. AFRENSON: That is objected to. It is irre event and immaterial.

the litigation. Counsel would rather bring it out on direct rather than you bring it out on cross.

- A The answer is yes.
- Will you describe the nature of that?
 MR. JINKINSON: Objection.

THE COURT: In other words, you are on one side and they are on the other, Mr. Rubenstein.

THE WITNESS: Yes, sir.

THE COURT: That is all we need know about it.

MR. BONETA: At this time we would like to show the witness plaintiff's Exhibit 24, a dental dealer reply form.

- Q Do you recognize that document, sir?
- A Yes, sir.
- Will you describe what it is?
- A This was issued to us under a subpoena.

1	mmsg 3 Rubenstein-direct 229
2	and it is actually a questionnaire as to our sales over
3	the years, from '68 to '70.
4	Q Who received that document?
5	A I believe it was received by our office and it
6	was forwarded to our controller and we had him fill it
7	out.
8	Whom did you receive it from?
9	A I believe we received it from the attorney's
10	of Healthco.
11	Q Excuse me. Will you repeat that.
12	A I'm not sure. I think this was sent to us by
13	you know, I didn't receive it actually, so I don't know
14	exactly who it came from.
15	THE COURT: I guess it came from the government.
16	THE WITNESS: Yes.
17	MR. BONETA: I think the witness is a bit
18	confused right now.
19	THE WITNESS: I don't know where it came from,
20	really.
21	THE COURT: I will assume it came from the
22	government.
23	Q Have you ever seen this document before?
24	. A. Yes, I have.
25	Q Will you describe the nature of your contact with
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.	this	document?

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	A	Well,	actual	ly I d	id not	have pe	ersonal	contact
with	this	specif	ic doc	ument	that yo	ou have	now sh	own me.
In ot	ther v	ords,	it was	forwa	rded to	me and	the i	nformatio
was r	eque	sted, a	nd, as	I say	, I sul	bmitted	it to	my .
contr	rolle	. who	to the	best	of his	abilit	v fille	d it out.

Q Could you please look over question 1 and tell
me if the percentages narrated in that response correspond
to your sales figures of Central Dental Supply Corporation
in 1968?

A I would assume so, yes.

MR. JINKINSON: Is that the end of your question?

MR. BONETA: Yes.

MR. JINKINSON: I object, your Honor. The man tated he had nothing to do with this document.

It calls for hearsay.

THE COURT: I will take it. Overruled.

A I looked over the document. I didn't put in the full figures.

Q Do the figures related there correspond to your experience?

A To my experience they accurately reflect our percentages of sales in the different categories stipulated in the first paragraph.

Let's go to question number 2. Do those

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figures reflect your recollection of what your company's sales, Central Dental's sales were in the years contained in this questionnaire.

MR. JINKINSON: I object. The document speaks

for itself and his recollection can't help it one way or another.

THE COURT: He has not offered it yet, and I suppose he wants to qualify, lay a foundation to offer the document in evidence. For what it is worth I will take this witness's answer.

A Well, I know in my company's sales these reflected pretty accurately during those years.

MR. BONETA: NO further questions on the document.

We are not going to move to have it received in evidence

at this time.

Q Mr. Rubenstein, is Belvac Corporation associated in any way with a mail order house?

A Is it associated? I don't know what you mean by that.

Q Do you have a mail order operation type of business?

A Before I was associated with Belvac they did send out one flyer, and that was the extent of their mail order.

But they were not a mail order house per se.

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O This is Belvac?

Belvac did sent out one trial flyer which might
be considered a mail order.

- Q Are any of the companies which are associated with Belvac engaged in the mail order field?
 - A I didn't quite understand.
- Q Are any of the corporations which are associated with Belvac Industries engaged in the mail order business?
 - A No, they are not.
 - Q They are not?
- A But for one exception, you know, except this one time when Belvac did send out a flyer.
 - Q Who owns Belvac Corporation?
- A It is over-the-counter; it is, you know, owned by stockholders; it is listed over-the-counter.
 - 0 Who is the principal stockholder?
 - A principal stockholder is Daylin.
 - Q What is Daylin?
- A -Daylin is a corporation listed on the New York Stock Exchange.
- Q Is Daylin a sole corporation or does it have also submidiaries?
 - A It has many subsidiaries, yes.
 - Will you explain the nature of Daylin's business?

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Well, Daylin is a company that has four main areas of merchandising, one being the Great Eastern Stores, the other being Diana Stores, which is a soft goods clothing store; the third being a medical-dental complex, which would include Daylin Surgical Supply Company, which is predominently on the West Coast, and its subsidiaries; and the fourth is a home improvement center which is mainly located in the Southwest and West.

Does Daylin operate either by itself or through any of its subsidiaries, a mail order firm?

Yes, it does. It operates Sherry Pharmaceutical and Blank Dental and Medical.

Mr. Rubenstein, are you familiar with the Rocky Mountain Orthodontics?

Yes, T. am.

Are you familiar with Ormco? Q

Yes.

Are you familiar with the products that these companies sell?

Yes.

Will you relate the nature of those products?

Well, they sell a specialized product which is primarily orthodontic supplies, attachments, and things like that.

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almost every phase of the business, from selling of equipment and supplies, teeth, laboratory, and all the various aspects of the business.

- Q You are familiar then with most of the sellers that compete in the New York Metropolitan area.
 - A Yes, I am.
- Q First of all, what do you consider to be a major competitor?
 - A One of my major competitors?
- Q Yes, what is a major competitor?

 Do you have a definition?

MR. JINKINSON: I object to this. This is a repetitive, cumulative, gone over before.

THE COURT: Well, I think I will just have to sit here and take it on the chin. I will overrule the objection and hope I can survive.

MR. JINKINSON: May I have a standing objection.

I don't want some appellate Court to think I sat here
quietly.

THE COURT: No, I have your point and you have a standing objection.

A Well, my major competitor predominently is

Healthco; the other two competitors I have that are left

now in the field outside of Healthco, which is the major one,

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is Walter Dental Supply, Durable Dental Supply, and Rubenstein Dental, and a few other little ones.

Q What considerations do you take inhand when you make this determination of who is a major competitor?

A The determination I have is one that provides the same services and supplies that I do, in other words, generally will sell merchandise equipment, have salesmen in the field, and solicit dentists in the metropolitan New York area.

- Q Is dollar volume sales a factor also?
- A Yes.
- Q What dollar volume do you consider to be substantial?
- A Well, the ones I mentioned are all over, I believe, the half million dollar mark.
- Q Do you consider any mail order houses competing in the Metropolitan New York area major competitors?
- A To my knowledge their thrust has not been predominently in the New York Metropolitan area. They seem to get most of their business from rural areas where service cannot be delivered to the doctors as expeditiously as we can, having a proximal location in the New York area. In other words, we can get an order in the morning and get it to the doctor in the same afternoon.

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has to wait for a letter to come into its depot, then has to fill the order, and then by mail it has to go out.

So their main thrust is predominently in the rural areas, which is not the area that we cover primarily.

MR. BONETA: Your Honor, we are showing the survey response anew to the witness. I have one further question to ask on it. This is Exhibit 24.

MR. JINKINSON: Isn't that the same one he has seen before?

MR. BONETA: That is correct.

THE COURT: For identification.

will you please read question 1, not aloud, just read it to yourself, please.

Could you relate what the question contains.

MR. JINKINSON: Your Honor, I think the document speaks for itself.

THE COURT: Except it is not in evidence.

I would agree normally.

MR. JINKINSON: I object for that reason also, since it is not in evidence.

MR. BONETA: I will rephrase the question to satisfy my colleague.

MR. JINKINSON: You don't have to satisfy me;

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Q You will notice that that question contains certain definitions. Now I would like you to tell the Court whether those definitions mean anything to you, whether those categories mean anything to you.

MR. JINKINSON: I object to the question as leading and suggestive.

THE COURT: I will sustain that.

Q The question is stated as follows:

satisfy the evidence rule. That is all.

"Approximate percentage of company's total sales represented by: (a) dental equipment (dental chairs dental units, X-ray machines, sterilizers, lights, cabinets, et cetera); (b) dental sundries (non-durable, consumable dental products, filling materials, anesthetics, impression materials, waxes, caments, dental chemicals, non-precious metals, dental burs, et cetera); (c) artificial teeth; (d) dental precious metals; and (e) service and repair of dental equipment."

Mow, I ask you, Mr. Rubenstein, what I have just read, does that mean anything to you as a dental dealer?

A Yes. This more or less follows the guidelines which are established by the ADTA reporting section in which the various categories of the materials we sell are delineated.

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MR. BONETA: No further questions, your Honor.
THE COURT: All right, Mr. Jinkinson.

MR. JINKINSON: I will yield to my colleague, Mr. Bianchi.

CROSS EXAMINATION

BY MR. BIANCHI:

Q Mr. Rubenstein, Belvac, as I understand it, is made up of Pyramid Gold, Central Dental and Belvac?

A Yes.

Q Who are the competitors of those companies?

Are those the same companies you listed before when you said who your competition was?

A Well, let's take it one by one --

MR. BONETA: I object. I don't think the witness testified as to who his competitors were.

THE COURT: He testified as to who his competitors were.

MR. BONETA: But not as to the competitors of the other dealers.

THE COURT: I will permit it.

Q Who are the competitors of Belvac, Pyramid and Central?

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operation that operated outside of New York. In other words, we were located in New York, but the thrust of our business was in the rural areas. So if we were to name the competitors of Belvac, I would have to say they were primarily, in fact, they were practically wholly outside of the New York-New Jersey Metropolitan area. I don't know if you want me to enumerate.

THE COURT: Did Belvac sell dental products.

THE WITNESS: Belvac sold dental products, but they sold it through the telephone and they only sold it outside of the metropolitan area, so I would have to name the dealers outside to answer that.

THE COURT: Next question.

- Q As part of Daylin, do you compete with Blank, which is also held by Daylin?
 - A Presently?
 - Q Yes.
 - A No.
- Q Why does Central presently not compete with Blank?
- A Sell, because before we bacame affiliated with Daylin, Blank was a separate corporation in the dental mail order business. They found initially, as I had said

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previously, that their returns were very low, especially in the New York area. When we became affiliated with Daylin, we had the list of our customers removed from the mailing so that when Blank sent out their dental folders they do not include the customers of Central Dental.

Do It is a fact, is it not, that you and your brother decided after receiving complaints from your salesmen that their customers were being solicited by this other company, to go to that other company and enter into an agreement with Mrs. Blank, who is the president of that company, to remove the names of Central customers from the people to whom Blank sent its mail order catalogues? Isn't that a fact?

MR. BONETA: Your Honor, I must object to this.

THE COURT: Objection overruled.

- A Let me just take you back in time --
- Q Will you answer my question?
- A I will. May I answer it?
- Q We will go back later.
- A Originally Central was sold to Daylin.
- Q I understand that.
- A When we were owned by Daylin wholly and not by
 Belvac, we became part of Daylin, and Blank was also
 part of Daylin, and this was a corporate decision to remove

1	mmsg 16 Rubenstein-cross 242
2	Central's customer list from Blank.
3	Q Are the stockholders of Blank Corporation the
4	same people as the stockholders of Belvac and Central?
5	A Not at that point in time.
6	Q Now my next question is, has the agreement
. 7	between these two companies not to compete continued
8	until the present time?
9	A Yes, not to compete, we just removed the list.
10	Q Well, you decided that Blank was not going to
11	solicit the customers of Central?
12	A Correct.
13	Q When did Belvac expand to the sale of dental
14	supplies generally?
15	A I think they had been in dental supplies for the
16	_last five years.
17	Q You are an adviser to Blank, are you not?
18	A They consult me, but I am not an official
19 .	adviser.
20	Q What were the sales of Pyramid Gold in '71?
21	A I don't have all the figures with me.
22	Q What is your best estimation as you sit there
23	today?
CONTRACTOR OF THE PARTY OF THE	

300,000.

In 1971, Pyramid Gold, I would say, was about

THE COURT: And this is Pyramid Gold?

THE WITNESS: Yes, sir.

Q Your estimate is they sold 300,000? Is this within the New York area?

A No.

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In1971 my question is what were the sales of Pyramid?

1971, I am a little hazy because I think that is when they first acquired Pyramid Gold and to the best recollection I wasn't with the firm at that time. They sold a lot in the Pennsylvania area, some in the Boston area, some in the New York area. They were fairly scattered.

THE COURT: Does Pyramid sell to dentists and dental laboratories?

THE WITNESS: Primarily to dental laboratories, your Honor, at that time.

Have you changed the estimate or did you say you couldn't give me an estimate?

I couldn't give you a definite estimate.

You have testified to me in another matter,

Didn't you'te stify on August 7, 1973

MR. BONETA: I object, your Honor.

under oath in a deposition and at that time didn't I ask you what the annual sales for Pyramid in 1971 were and didn't you testifythat the sales were one million aight?

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A From the best of my recollection about \$2 million.

Q Yes, 1971.

A Probably between one million nine and \$2 million, somewhere in that area.

MR. BONETA: Your Honor, I just can't see how the sales after the acquisition can be relevant to this case or Central Dental.

THE COURT: I think it might because doesn't it have some bearing on what the effect on competition of these acquisitions was?

MR. BONETA: That is true, your-Honor. Also the fact, your Honor, I did not cover that on my direct and the attorney is proceeding as if this were a direct examination.

this man here a second time? Suppose it is part of his case, isn't that more convenient just to finish with him now and not have to call him back again?

MR. BONETA: It is more convenient, but I feel it is the Government's privilege at this time to object.

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THE COURTY Yes, but I don't think the objection is well taken, so I will overrule it.

What were the sales of Central in 1972?

Our year ends in '70. We have a fincal and a little confusing. Our year end is in January.

. The closest fiscal date you can give us in *72.

In '71 I believe it was 2-1. In '72 I'd rather not guess. I'd rather consult my figur es on tha

Again then at the same time you testified to me at an earlier date under oath on Tuesday, August 7, that your sales were four million eight for Central in '72.

THE COURT: I don't like this manner of interrogation. You are attempting to summarize what he testified I haven't any doubt that you are doing it accurately but I am just not accustomed to that way of asking questions. I think what you have got to ask him is, didn't you at an earlier occasion or when you were asked this question; didn't you give this answer: "I think that is a much better way of doing it.

Does the Government have a copy of this deposi-

Yes, your Honor, we do.

purchase each year?

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A I don't know what you mean.

2 In terms of supplies and equipment do you have an estimate as to what their average annual consumption would be?

A I would say if you want an arithmetic median,
I would say a median average would be, in supplies, about
1200 to 1400 a year.

MR. BONETA: Your Honor, if I may, I would like to state a continuing objection to all this line of interregation because it is quite clear that none of the questions posed by brother counsel here has anything to do with any of our direct. He is asking for things like how many dentists are in the metropolitan New York, what is the average consumption of dentists in this market, and these things are completely irrelevant to what our direction was.

THE COURT: If it is part of his case I will still let him do it.

I think that is a highly technical objection, I must say, a highly technical objection.

MR. BONETA: It is a bit unfair to the witness to be asking these questions at this time.

THE COURT: Why is it unfair to the witness?

If he can't answer it, all he has to say is "I don't know."

Is there a question pending?

MR. BIANCHI: No. The answer to the last question, could I have the answer?

(Question and answer mead.)

THE COURT: Each -entist would buy about 1200 to \$1400 worth of dental sundries?

THE WITNESS: Right.

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THE COURT: All right.

About how much would he purchase in terms of equipment on and average basis per dentist per year?

some dentists refurbish avery 20 years, some refurbish every ten years, some never refurbish, so it would be strictly hazarding a guess on an average in that regard.

Q. Well, at an earlier time on August 7, 1973, didn't I ask you this question:

annual purchase by a dentist is?

"A .. I would say roughly about two to \$3000 a year."

the equipment. There again it is strictly a guess.

Q Bow do you determine who your competition is?

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I determine the competition by who are providing the same services, the same goods in the same locale as

Q Would you consider any company who solicits
your customers to be a competitor?

A Not any company. For instance, if an airconditioning company solicits my companies I wouldn't consider
them as such.

Q Dental products dealer.

A Anyone soliciting my customers with the same type of products, yes.

a way so that you could determine what your sales by county

A Yes.

Q Has anybody in your company ever determined what the sales by county were?

We can reconstruct it because the different counties have different sales taxes.

Q My question is have you or has anyone in your employ ever determined what the sales by county of Central Dental were?

to this question here, because we would use that as

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My question is do you know if you or anyone else in your company ever broke down your sales by county?

A I imagine if they answered this questionnaire that somebody in my company must have.

Q. At the same deposition that we have talked about earlier didn't I ask you whether or not you or anyone else in your company had broken down sales by county and your answer was "No." I asked you "Has anyone in your company ever done that?

"A Not to my knowledge."

wouldn't need a county breakdown for any statistical purpose so it wouldn't be relevant to me. So I myself construed your question.

MR. SIRIGNANO: The characterization of that question asked on that deposition has been incorrectly made by counsel.

the question and answer and ask him if he was asked that question and did he give that answer.

allow you to determine what your sales to dentists would be

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in various countles?"

A. Yes.

Q I am just reading from the deposition:

because unfortunately each county has a different tax rate or most counties do. I think I can generally tell you that although recently in New york, Suffolk and Nassau have the same rate, but previously it seems every county had a different tax rate and we had to file our taxes according to counties. So I might be able to reconstruct it on that basis.

"Q Have you ever" --

THE COUR T: Wait. Were you asked that question and did you give that answer?

THE WITNESS: Yes, I did.

THE COURT: Next question.

- *Q Have you ever done that in fact?"
- A I certainly have never.
- Q Has anyone else in your company ever done that?

 THE COURT: Are you asking him now or about the deposition?

MR. BIANCHI: I am asking him now.

THE COUR T: All right.

apparently to answer this reply form they had to

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Rubinstein-cross

break it down by counties. So apparently my company did do that.

Q Do you know of any mail order companies who have entered the market of sales of dental supplies since 1968?

A Since 1968 do I perwonally know of any mail order company?

Q Yes, do you know of any mail order companies who have entered the market in the sale of dental supplies in the New York area since 1968?

A Your question isn't quite clear. You mean companies located in the New York area who have entered the mail order business. Is that what you are saying?

Q My question is do you know of any companies who since 1968 have started selling dental supplies in New York who previously did not sell dental supplies in New York?

A You mean to this day, right?

Q Yes.

A I think the only one I can recall which might fit that category is Applied Health Services, which was a company that went out of business. That is DES. It went out of business fairly recently, about two years ago, and it had been a full service dealer like myself and went into mail order.

1	desb-11 Rubinstein cross 254
2	Q Are you familiar with the APTCO Company?
3	A Who?
4	Q The APTCO Company. A-P-T-C-O.
5	A You really fractured that. We own the APTCO
6	Company. APTCO was a factory that we owned in Israel that
7	manufactured teeth. Is that the company? I don't know
8	if I am misconstruing your pronunciation or not, APTCO?
9	Q Yes.
10	λ Yes.
11	Q Do you know of any manufacturers who are not
12	making direct sales, manufacturers of dental products who
13	were not making direct sales prior to 1968 who are today
14	making direct sales to customersin the New York area?
15	A The only one I know of, and I think they are doing
16	it on just a few items, a few limited items, is Parkell.
17	Q Do you know whether Blank Drug Company solicits
18	Health Co.'s customers?
19	A I assume they send mailings to Health Co. custo-
20	mers, yes.
21	Q Has Belvac made or attempted to make sales of
22	equipment via mail order catalogs?
23	A As I mentioned to you, they only had one mailing
24	and that had a limited amount of didn't really have
25	equipment, what you would really consider equipment.

明年 ところの神の中では、大きかのではなかかる。

Rubinstein-cross

Q Would you define equipment for me? How do you use that term?

A Well, they had some small pieces in that mailing but they didn't have major equipment. Let me rephrase that answer. Like units, chairs, lights, compressors.

Q Do you recall what the most expensive item was that you offered in that catalog?

A I think the most expensive was a portable unit.

We didn't sell any of them unfortunately.

Q What was the price on that?

A I think it was \$1900, but we didn't get one response.

MR. BIANCHI: We have had some confusion in our minds about the family relations of this Daylin Corporation and I am wondering if we might ask the witness to help us by giving us sort of a corporate family tree on the blackboard over there so we can understand what these companies are, what their relationships are to each other and what each sells.

THE COURT: Well, if that would help.

Do you know it well enough to do it?

THE WITNESS: You are talking about Belvac now?

THE COURT: Belvack, Central and Daylin. Pyramid and Blank.

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THE WITNESS: I suppose I can give it to you in very simplistic terms.

MR. DE MARCO: I would be happy to do the drawing
THE COURT: I thought he said that Central
was owned by Belvac, that Belvac stock is traded over the
counter, and that the owner of most of the Belvac stock or
a majority of the stock was Daylin.

THE WITNESS: That is exactly right.

THE COURT: Now, what else do we want to know?

And that Daylin's own stock was publicly held and traded on
the New YorkStock Exchange.

- Q And Daylin owns the st ock -THE COURT: Blank is a subsidiary of Daylin.
 THE WITNESS: You got it perfectly.
- Q Which is also a subsidiary of Sherry Pharmaceutica
 THE COUR T: No, Sherry is also a subsidiary
 of Daylin.

THE WITNESS: Exactly.

THE COURT: Sherry and Blank are two of the subsidiaries of Daylin.

Q Blank is not a subsidiary of Sherry?

know how their particular -- they are wholly owned by Daylin.

I don't know which is under which or how that structure is.

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I don't know that. I don't think that is relevant.

Q All the companies we have just named are in the business of selling dental products in some form to dentists laboratories and Government agencies and institutions in New York.

A Only Blank Dental sells dental supplies. Sherry Pharmaceutical sells supplies to physicians.

Q Do they make any sales to dentists in New York, Sherry Pharmaceutical?

A Not to my knowledge. They handle mostly physicians.

Now, with regard to the companies on the other side, I take it all of those companies are in the business of selling dentralproducts to dentists, laboratories, Government agencies and institutions within the New York area?

A All except Belvac. We do not make sales in the metropolitan area.

Q Belvac has zero sales?

A Practically zero sales.

Q Practically zero or zero?

A There would be less than a thousand dollars, if possible.

MR. BONETA: Your Honor, I really hate to do this, your Honor, but I have to reaffirm my objection of a

desb-15

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while ago. It seems that this whole line of questioning is not directed in any way or relevant in any way to the controversies and issues in this particular case, which are the acquisitions of four companies by the defendant, but apparently have something to do with the witness' treble damages against the defendant. If they are seeking to elicit testimony — it seems to me they are trying to elicit testimony to be used in that case because I don't see the relevancy of any of this to the present case.

evidence we have taken in his case or the last. It is impossible for me, with my limited knowledge of the background and the law here, to know what is relevant and what isn't. We haven't got a jury and I see no reason — it is easier to go ahead and take the irrelevant evidence than it is foryou and me to argue whether or not it is relevant. You may be perfectly right. Mr. Jinkinson says he has objected a lot and I have said occasionally he may be right, but I can't tell at this point. I will overrule the objection.

MR. BIANCHI: If I may, I think the testimony as to what these competitors are doing in the market place is relevant to thelawsuit.

THE COURT: You may be right. I don't know.

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Let's go on.

Q Did you tell my colleague, Mr. DeMarco, who is sitting at counsel table there, that Belvac sold approximately within the New York metropolitan area \$18,000 worth of products in 1968 and that figure grew to approximately \$108,000 in 1972?

- A That is correct.
- Q Were those dental products?
- A Those were dental products. Your other question I was answering was now. What you are referring to is past.
- Q Since 1973 Belvac is no longer selling dental products within New York?
- A Well, what has happened is we curtailed the telephone operation of Belvac. You are talking about *68. When he asked me what Belvac was selling I incorporated Pyrmaid with Belvac. And then you previously separated them and I think that is where possibly the confusion is coming from.
 - Q Maybe I still don't understand it.
- A Let me clarify it. There is Pyramid and there is Belvac Sales and there is Belvac International. If you want me to respond you will have to delineate what you want me to respond to.

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When I said there is practically none, I am talking about Belvac Sales. When you are talking about Belvac International, that is the question I responded to your colleague, Mr. DeMarco.

That is one of the reasons why I was confused as to what your corporate setup was.

The combined sales of Belvac then, Belvac Sales, Belvac International and Pyramid Gold would have been then, I take it, \$108,000 in 1972?

A It would be predominantly Gold.

Q And that was the figure that relates to \$18,000 in 1958?

A Yes.

Q So the sales have grown approximately 50 per cent per year between '68 and now?

A They haven't grown. It is just the fact we took the Pyramid Company that stood alone in the New York area and then we acquired them. So it hadn't grown.

It had been assimilated through the acquisition of Pyramid Gold.

Q Okay.

MR. BIANCHI: I have no further questions.

MR. SIRIGNANO: Your Honor, may we have a

brief adjournment for a few minutes?

THE COURT: Before we have redirect?

MR. SIRIGNANO:

THE COURT: All right. We will take a few

minutes recess.

should be talking to counsel during the recess.

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I don't think the witness MR. JINKINSON:

MR. SIRIGNANO: I perfectly agree.

THE COURT: Let's get this straight. give any directions whatever as to counsel talking to a witness. The witness can talk to counsel on either side, as much as he likes, but I will permit counsel to inquire fully into what he has said. I do that uniformly not only in civil cases but in criminal cases, because I can't assume that members of the bar are going to be out suborning perjury, so I never give any such directions. But, of course, it is freely to be ventilated if counsel want to do

REDIRECT EXAMINATION

BY MR. BONETA:

Mr. Rubinstein, what were Belvac's sales in 1968, 1969 and '707

I'd have to hazard. That is before I got to the company. I think I may have something in my file.

1	desb-19 Rubinstein-redirect
2	It is published. I could get it.
3	THE COURT: Do you want to take a look at some
4	papers?
5	THE WITNESS: I don't know if I have it with
6	me. I will just double check.
7	The net sales in '68 were \$296,701. The '69
8	was \$416,000. And you wanted *70?
9	Q Yes, please.
10	A In 1970 it was \$1,417,000.
11	Q Do you have sales for '71 and '72?
12	A Yes. '71 they went down to \$853,000, and '72
13	was \$1,812,000.
14	Q Do you also have knowledge of Pyramid sales
15	for those years?
16	A I don't have those with me. I could just give
17	you sort of an educated guess on that if you wanted.
18	Q Were these sales in metropolican
19	A Predominantly not metropolitan New York.
20	THE COURT: You mean the sales of Belvac? Is
21	that your question?
2	MR. BONETA: Yes, Bir.
2	THE COURT: All right.

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Q	Are	Belvac	and	Pyramid	manu	facturers?
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- A Pyramid is a manufacturer.
- Q What about Belvac?

A Belvac is not a manufacturer. Let me qualify that. They went through a transition period. They owned a tooth factory in Israel at one time. This goes back in '68. So in that respect they were manufacturers. They discontinued that at the end of 1971.

Q Are you privy to any information as to what Belvac's sales were in the metropolitan New York area in the years which I have mentioned, '68, '69 and '70?

THE COURT: Infinitesimal, you said, didn't you?

A That is right. The big sales year when we had 1,417,000, incorporated into that figure was almost a million dollar sales that was to a foreign company of one of their products.

. Q What about Pyramid sales, did they sell in the Metropolitan New York area?

A Yes, but they didn't become part of Belvac, I believe, until 1970 or 1971.

Q So you don't have figures for the years prior to that year?

- No. I would just be guessing.
- Q What were the sales in 1970 of Pyramid in the

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rk area?

- Yes.

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I think I gave that information, but I don't have it right at my fingertips.

THE COURT: It was a hundred and eight thousand. THE WITNESS: I think that was it. Was that the figure?

THE COURT: I think it was a hundred and eight thousand, as I remember it.

We mentioned previously in the direct testimony and you stated that the categories contained in the plaintiff's questionnaire which you examined appear to conform with the ADTA recognized accounting categories?

- That is correct.
- Would you say that those categories are also followed and recognized by non-ADTA Members?

MR. JINKINSON: I object. This has nothing to do with the cross examination.

THE COURT: I will permit it.

- I would assume so.
- Would you be more specific?
- I think they are pretty basic general delineations. I can't imagine any dental dealer, although

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42		t be a member of				
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		those guideline	es, because	e they ar	e separate	
1	categorie	••	en die way.			- 115
5	Q	You stated that	t you were	a member	of the	.43
6	Dental De	alers of America	a?	grija		
7	A	That is correct	t			• • • • • • • • • • • • • • • • • • • •
8	Q	Do you recogni	ze this do	cument?		
9	•	MR. JINKINSON:	This has	been ask	ed and ans	wered
10	before.				: 10	
11	A	Yes.				
12		THE COURT: No	t by this	witness.	I quess.	
13		MR. JINKINSON:				
14		THE COURT: I				
15	shown it.		Jon C Zone	moor man	naving bec	
16	BROWN IC.					
17		MR. JINKINSON:	I object	to it as	improper	
.	redirect	examination.			4.1	
18		THE COURT: Ove	rruled. G	o ahead.		
19	ige A	I have seen th	is before,	but this	is the fi	rst
20	time here	I have seen it	•		A de g	
21	Q, Q	Do you recogni	ze that do	cument?		
22	A	Yes, I do.				

Well, it is a membership --

MR. JINKINSON: The document speaks for itself.

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Will you state what it is for the record?

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Q Would you identify the document?	7775
THE COURT: He can describe it.	A CONTRACT OF THE PARTY OF THE
A (Continuing) It is a membership	
	10 10 10 10 10 10 10 10 10 10 10 10 10 1
Dental Dealers of America.	1.4
MR. BONETA: We move to have it	admitted in
evidence, plaintiff's Exhibit 23.	444 77
THE COURT: Have you seen it?	
MR. JINKINSON: I think I saw a	copy of it
yesterday, '68 and '69. I object to it as	s being immaterial
to any issue in this case.	
THE COURT: Overruled.	
Mark it.	
(Plaintiff's Exhibit 23 for ide	ntification received
in evidence.)	
MR. BONETA: Your Honor, we wou	
introduce into evidence Plaintiff's Exhib	1t 6.
THE COURT: What is it?	
And show it to Mr. Jinkinson.	
MR. JINKINSON: It is some crop	ped pages from
somewhere. I don't know what it is.	• M 1 1 2 2 2 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3
I object to it.	
THE COURT: Has a foundation be	en laid for it?
MR. BONETA: It was identified	
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Mr. Walter's testimony.	
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THE COURT: Do we have the transcript from his testimony?

MR. BONETA: Yes, your Honor, we have it here.

THE COURT: Tell where it was identiced?

I can't remember it. I must say it's a pretty confusing method to introduce exhibits out of order. In other words, a man identifies it and describes it and talks about it and lays the foundation for it apparently, and then for one reason or another the government elects to offer it 24 hours later.

MR. LUBLINSKI: It was marked for identification on page 48, line 15 of Walter's direct examination.

THE COURT: Let me see it.

There is no foundation at all for this.

MR. JINKINSON: No.

THE COURT: None at all. It is an outrageous thing; it is just callous and improper on the part of the government to inflict this.

MR. BONETA: Your Honor, we have no further questions.

THE COURT: Recross?

MR. JINKINSON: No, your Honor.

THE COURT: Thank you, Mr. Rubenstein.

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Next witness.

MR. SIRIGNANO: Your Honor, we did not anticipate that these witnesses would go as quickly as they have, and our next witness will not be available for about a half hour or so.

THE COURT: It is 11:30. Suppose, then, we recess until 12 o'clock, and I will come back at 12 o'clock.

MR. SIRIGNANO: Thank you, your Honor.

(Recess taken to 12 o'clock noon and at that time continued to 2:00 p.m.)

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AFTERNOON BESSION

2:00 p.m.

thought that counsel for the plaintiff had in mind the parade as a reason for the adjournment. As I say, I have banished such a suspicion from my mind.

All right, Mr. Sirignano, do we have any witnesses?

MR. SIRIGNANO: We have.

Pirst, I would like to have marked as

Plaintiff's Exhibit 20 and offer in evidence now a

Census Bureau report, the authenticity of which has already
been stipulated.

(Plaintiff's Exhibit 20 marked for identification.)

THE COURT: Mr. Jinkinson, I suppose this is

an exhibit which you have seen and you say it is

authentic, but you object to its relevancy?

MR. JINKINSON: That is right.

THE COURT: I will overrule the objection.
Mark it.

(Plaintiff's Exhibit 20 received in evidence.)

THE COURT: I am not passing on what weight

it is entitled to be given or anything else.

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2 MR. SIRIGNANO: I would like to call to the 3 stand Mr. Hyman Ritchin.

nyman RITCHIN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FIRIGNANO:

Q By whom are you employed?

A I am a senior economist in the New York office of the Antitrust Division.

Q What is your educational background?

A I have a BBA degree from the City University and I have an MBA in the PHD from New York University.

THE COURT: Bachelor of Business Administration?

THE WITNESS: And Master of Business Administration
and Doctor of Philosophy.

THE COURT: Bachelor of Business Administration from the College of the City of New York?

THE WITNESS: That is right.

THE COURT: And a Master --

THE WITNESS: Of business administration.

THE COURT: From where?

THE WITNESS: Now York University, and a

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Doctor of Philosophy from New York University.

THE COURT: A Doctor of Philosophy in certain discipline?

THE WITNESS: Yes.

THE COURT: In which discipline is your Doctorate?

THE WITNESS: It is in business administration with a major in economics.

THE COURT: Thank you.

Q Do you presently hold any position with any academic institutions?

A Yes, I am on the faculty of Baruch College of City University; I am an adjunct professor in economics in the finance department of Baruch College; I was also visiting professor of economics at Cornell University in the summer of 1965.

Q How long have you been with the Antitrust
Division as an economist?

A I have been employed in the Antitrust Division since September of 1938.

Q Generally, what are your duties for the Antitrust Division?

A I generally assist the attorneys in any seconomic problem which may arise in connection with

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It was specifically to conduct a survey, and limited

to that.

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MR. SIRIGNANO: I would like to have marked for identification plaintiff's Exhibit 25.

(Plaintiff's Exhibit 25 marked for identification.)

MR. SIRIGNANO: These are interrogatories propounded to the defendant and answered by the defendant.

THE COURT: This document starts out with a subheading, Definitions, and then it defines Person, Dental Products, and Metropolitan New York Area.

MR. SIRIGNANO: Yes.

THE COURT: From what is that taken?

MR. SIRIGNANO: That is taken from the beginning of the interrogatories.

THE COURT: The plaintiff's interrogatories, page 1?

MR. SIRIGNANO: Yes.

THE COURT: In other words, that is intended as far as this exhibit is concerned to make more precise the interrogatories?

MR. SIRIGNANO: Yes. If you will see the interrogatories, each of those terms is used.

Since the terms were defined at the beginning of the interrogatories, I thought it was proper.

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THE COURT: Yes, quite, I agree.

I have not asked whether Mr. Jinkinson has any objection?

MR. JINKINSON: Yes, your Honor, I certainly

MR. SIRIGNANO: I believe the importance of these interrogatories could be seen in the context of this witness's testimony, your Honor.

THE COURT: I have to admit it simply as interrogatories addressed to the defendant, because the answer of the defendant does not tell us anything.

MR. SIRIGNANO: I believe it does. That is the point which I intend to establish through this witness.

THE COURT: If you say you rely on the fact that they don't maintain listings of these,

I will admit it. I will overrule your objection,

Mr. Jinkinson.

Mark it, Mr. Clerk.

(Plaintiff's Exhibit 25 received in evidence.)

- Q Have you examined Plaintiff's Exhibit 25?
- A Yes.
- Q Did you have any part in the drafting of the language?

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A Yes, I helped draft the language of interrogatories 5, 6 and 7.

Q Will you explain the circumstances under which you are assisted in the drafting?

A Well, if I was to conduct a survey of the market it was essential that I know the participants in the universe, it was necessary that I know everybody in the market. Therefore, the purpose of these interrogatories was to elicit this kind of information from the defendants.

If you notice in Interrogatory 5 there is an attached schedule. It says:

"State the name and address of each person located in Metropolitan New York not listed on the attached schedule who is regularly engaged ..." and so forth.

Well, the attached schedule was a list of 59 sellers in the market, approximately 59 which the staff had located in the course of investigation, and the purpose of it was to expand on this list so that a complete universe could be had.

THE COURT: I am sorry to interrupt you, and we will get the context when you resume.

But, Mr. Sirignano, I assume that there will be

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some evidence to show what this exhibit A is.

MR. SIRIGNANO: It is attached to it.

THE COURT: Of course it is attached to it.

But he says it is sellers in the market. There will have
to be some proof from somewhere or something that these
are sellers in the market. I can't accept his statement.

MR. SIRIGNANO: The list which is attached is not being attached for the purpose of proving these were sellers in the market.

THE COURT: But he is assuming for purposes of his answers that they are sellers in the market, and, as I say, if you are relying on the fact that these are sellers, in the market —

MR. SIRIGNANO: We are not in this context,

THE COURT: All right.

- Q Dr. Ritchin, I asked you to examine the schedule attached to Interrogatory 5?
 - A Yeb.
- Q Do you know where that list of names was obtained?
 - A It came from a number of different sources.
 - Q What are those sources?
 - A We examine the trade association directories

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which listed sellers in the market, the Metropolitan

New York area. We also examined classified directories,

and also the staff interviewed a great number of dealers

in the Metropolitan New York area in order to elicit

this type of information.

Q So, then, this is a list of names of people who had been identified as such?

A Yes.

THE COURT: Doctor, I interrupted you before.

Can you remember where you were? Would you like the reporter to read it?

THE WITNESS: Where I finished?

THE COURT: No, you didn't finish. I interrupted

MR. SIRIGNANO: I think I can take it up without doing so.

THE COURT: All right.

MR. SIRIGNANO: I would like to have first marked for identification as Plaintiff's Exhibit 47 this 1968-1969 directory of the American Dental Trade Association.

(Plaintiff's Exhibit 47 marked for identification.)

MR. SIRIGNANO: I would like to show the

witness Plaintiff's Exhibit 23, which has already been

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THE COURT: Well, now, let's stick to 47.

Are you going to offer it in evidence?

MR. SIRIGNANO: Yes, I am following

Dr. Ritchin's identification.

introduced in evidence.

THE COURT: Have you seen it, Mr. Jinkinson?

MR. JINKINSON: I don't know whether I have

or not.

THE COURT: Show it to Mr. Jinkinson.

Any objection?

MR. SIRIGNANO: I have not introduced the directory yet, your Honor.

THE COURT: All right, we will wait.

- Q Have you examined this directory, Mr. Ritchin?
- A Yes.

THE COURT: Now that he has examined the exhibits, what?

MR. JINKINSON: 47, I believe.

THE COURT: 47 for identification and 23 in evidence.

Q Are these directories which were used to compile some of the names in that list?

A They were.

MR. SIRIGNANO: I would like to introduce at this

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Plaintiff's Exhibit 47.

THE COURT: I take it, Mr. Jinkinson, there is no doubt this is authentic?

MR. JINKINSON: No.

THE COURT: But you object to it?

MR. JINKINSON: I object to it, because if that is all the doctor did, compiled a list, of course, there is no showing that everybody supplying dental products in New York City belongs to that trade association.

THE COURT: I understand.

MR. SIRIGNANO: Nor do we claim it.

THE COURT: The objection is overruled.

(Plaintiff's Exhibit 47 received in evidence.)

- Q I believe, Dr. Ritchin, you were testifying about your participation in the drafting of interrogatories 5, 6 and 7?
 - A Yes.
 - Q What was the occasion of your participation?
- A Well, I was assigned to the case in order to survey the market and in order to survey the market we wanted a complete census, and in order to get a complete jcensus it was necessary to get all the sellers in the market, and this was one method used to accomplish this purpose.

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Q What was the purpose with reference to the planned surveys, questions 5, 6 and 7?

A I'm sorry, I don't understand the question.

Q How specifically did questions, the interrogatories, 5, 6 and 7 assist you in that matter?

A Well, it would assist materially because number 5 says, "State the name and address of each person located in Metropolitan New York not listed on the attached schedule who is regularly engaged and so forth. Since those persons who are regularly engaged who sell in three distinct counties in New Jersey -- a

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- Q Why were those three counties added?
- A Those three counties were added on because originally the geographic market was defined as New York City plus Westchester County, Nassau, Rockland, Suffolk and the northern New Jersey counties.

And the defendant stated that it should include these three additional northern counties of the State of New Jersey. So therefore we included it in.

THE COURT: That would be Morris, Somerset and Middlesex?

THE WITNESS: That is correct. And on number

7 we asked for the names and addresses of each person not
located in such areas. In other words, we wanted to find
out anybody outside of the area who sold in the metropolitan
New York area.

Q Upon receiving the reply to these interrogatories,
did you reach any conclusion with respect to the survey
you were about to undertake?

A Well, I assumed that they had no information to supply and therefore we had to rely on all other sources that we could, and we started designing the survey --

MR. SIRIGNANO: I ask to have marked for identification as Plaintiff's Exhibit 26.

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MR. JINKINSON: Your Honor, at this particular time I would like to request the Court if I could have a short voir dire examination of the witness because I think it would fit in better in an even flow of the matter.

THE COURT: Well, let's see what this exhibit

is. Let's mark it for identification, Mr. Clerk.

MR.JINKINSON: I am not interested in that exhibit.

THE COURT: But the voir dire is only proper in respect to an exhibit that is offered.

MR. JINKINSON: Well, it is in response to the questionnaire.

THE COURT: Well, then, we will get to that on cross-examination.

If there is an exhibit offered you are normally entitled to a voir dire as to the exhibit.

(Plaintiff's Exhibit 26 was marked for identification.)

THE COURT: Now, are you offering this in evidence?

MR. SIRIGNANO: No, your Honor, not yet. We will ultimately, but not at this moment.

THE COURT: All right. Well, counsel would normally be entitled to a voir dire when the document is

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2	offered.
3	Will you examine this document.
14	A Yes.
5	Q Have you seen it?
. 6	A Yes, I supervised the preparation of it.
7	Q Can you tell me what this document was intended
8	for?
. 9	A It was intended to measure primarily it was
10	intended to measure the number, and size distribution of
11	sellers in the geographic market stated here.
12	Q About when was this prepared?
13	A It was prepared could I just look at my
. 14	notes?
15	THE COURT: Of course.
. 10	THE COURTS OF COMPACT
16	A In January of 1971.
17	Q And what was done with it?
18	A It was sent to the list of companies which we
19	had.
20	Q The list in Schedule A?
21	A Yes, that is correct.
22	Q You see the document, the second page of that
. 23	document. What is that?
24	A This is a covering letter from John Sirignano
~	to the companies addressed and asking them to answer the

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questionnaire.

and introduced into evidence this interrogatory answer and have it marked as Plaintiff's Exhibit 27.

(Plaintiff's Exhibit 27 was marked for identification.)

THE COURT: Do you have a copy, Mr. Jinkinson?

MR.JINKINSON: I have a copy, yes, your Honor.

THE COURT: Any objections?

MR.JINKINSON: Yes, your Honor. The answer itself is self-explanatory. It is not possible to identify Health Care's ten major competitors. The major competitors measure more than ten.

THE COURT: I agree.

Overruled.

Mark it.

(Plaintiff's Exhibit 27 was received in evidence.)

Q Will you examine Plaintiff's Exhibit 27 and tell me what part, if any, in the taking of of your survey-

A Yes. The reply indicated that there were eight mail order houses listed as their major competitors. Therefore, it was essential — therefore it was decided that we survey mail order houses also.

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Q Had those names appeared prior to the receipt
of this interrogatory answer?

A Yes. Not the eight.

MR. SIRIGNANO: I would like to have marked Plaintiff's Exhibit 28 for identification.

(Plaintiff's Exhibit 28 was marked for identification.)

Q Have you examined Plaintiff's Exhibit 28 for identification?

- A Yes.
- Q Tell me what it is.
- A It is the survey form sent out to mail order houses.
- Q It differs from the first survey form, does it not?
 - A Yes.
 - Q Can you tell me why it differs?
- A Well, a dental dealer is primarily a geographic seller. He is a seller in a geographic place. A mail order house sells over the entire United States.

THE COURT: It may or may not, depending on the house.

THE WITNESS: Generally speaking they do. Therefore, we had to revise or we had to redesign the

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form in order to take account of this fact.

In the -

MR. JINKINSON: I object to this testimony on the part of the doctor because there is no foundation that he is familiar with where mail order houses sell.

THE COURT: I agree. I will treat it as going to its weight. I will let him testify.

Go ahead, Doctor.

regional markets. The purpose of the form was to measure the sales distribution in this particular area primarily to see to what extent they sell outside of the area. And as the mail order house sells all over the United States, it wasn't necessary to do that. And furthermore the returns from the dental dealers validated the hypothesis that the geographic market was a valid one. Therefore, we asked them to list their sales only for the metropolitan New York area, because their sales outside the metropolitan New York area really wasn't relevant to our survey.

Another distinction was that in the dental dealer survey we asked for a breakdown by counties, and there we were interested in measuring whether the metropolitan New York market was a series of local markets or whether it was a broad general market. So, therefore, this was

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essential in the dental dealer form, whereas it wasn't necessary in the mail order house - in the mail order form.

Moreover, the mail order people told us that it was practically impossible to answer that in terms of a br eakdown by counties, but essentially it wasn't that important. There was a change in the fir st question, too, because as the mail order sales are national it wasn't relevant to our inquiry as to their breakdown by type of categories. And they told us it would be impossible to break down by type of categories in the regional market.

Moreover, the mail order houses usually sell sundries. Some sell both. So, therefore, we asked them what type of products do they sell and if they just circled sundries there was no problem. But if they circled both we resolved that by giving the benefit of the doubt to the defendants by including their total sales in both, if there was any bias, it was bias against the Government.

In other words, the total was in each category.

MR. SIRIGNANO: I would like to have marked and
introduced into evidence Plaintiff's Exhibit 29. These
are interrogatories and response from the defendant.

(Plaintiff's Exhibit 29 was marked for identification.)

THE COURT: Have you seen this?

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MR. JINKINSON: I see it now and I call the Court's attention to our answer in which we inform the plaintiff that this is not a complete list.

THE COURT: I will keep that in mind. Do you object to it?

MR.J INKINSON: Yes, for that reason, your Honor THE COURT: Objection overruled. Mark it.

(Plaintiff's Exhibit 29 was received in evidence.)

- Q Will you examine this exhibit, 29.
- A I am reading it now.

(Pause.)

MR. SIRIGNANO: I would like to have marked as Plaintiff's Exhibit 30 for identification this document.

(Plaintiff's Exhibit 30 was marked for identification.)

- Q I would like you to examine Plaintiff's Exhibit

 30 for identification along with the answers to the interrogatories set forth on Plaintiff's Exhibit 29 and tell me,

 first, what is Plaintiff's Exhibit 30 marked for identification?
- A This is a survey form designed specifically for manufacturers of dental products.
 - Do you know to whom they were sent?

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A They	were sent to the list attached to this
interrogatory.	It was also sent to I think an additional
eight manufactur	ers that were listed by a member of the
management of th	e defendant in another deposition.

Q Do you know of all the questionnaires that were sent out how many of them were not accounted for?

A They were all accounted for.

Q Were replied received from every person to whom a questionnaire was sent?

A No, there were some that couldn't be found.

The survey was sent to some where the post office returned it "address unknown" or "addressee moved," left no forwarding address. In every case, however, we followed up and we tried to find where that particular company was. In some cases we were successful and some cases we were not.

MR. JINKINSON: Are you talking now about the surveys to the manufacturers only?

THE COURT: Yes. I take it so.

Q How about the previous two surveys, the previous two questionnaires?

A I am sorry, my answer was really addressed to all three.

THE COURT: I misunderstood. I thought it was just manufacturers.

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MR. SIRIGNANO: My fault, your Honor. I think I was vague in putting forth the question.

A I may add to that answer, there are some companies that merged. So therefore when you sent out two you
only got one response because the two companies merged.

In some cases companies were known by different names.

So therefore if you sent out two or three forms you only
got one answer back because it was the same company.

Q Were questionnaires sent to every company
on the identified -- identified on Exhibit 29 as manufacturers
making sales in metropolitan New York?

A Exhibit 29? Well, there were some listed here that we had formerly surveyed that were identified to us as dealers. Therefore, we had their response, and they answered that they were manufacturers. So, therefore, they were surveyed, yes.

Q Were there any other names listed upon the answer to the interrogatory shown in Exhibit 29 to whom questionnaires were not sent?

A Well, you mean questionnaires that were not sent at any time?

Q Yes.

No, I think questionnaires were sent to everybody.

Were there any instances, as far as you can

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recollect, in which no addresses were available?

Yes, there were 12 that we couldn't or that we didn't send surveys to because the addresses — the addresses were not known or they weren't given to us in answer to interrogatories and we were unsuccessful in locating them.

O Do you know if any specific effort was made to get those addresses from the defendant?

A Yes, we did, and we were unsucces sful.

MR. SIRIGNANO: I ask these two documents be marked for identification as Plaintiff's Exhibit 31 and 44.

(Plaintiff's Exhibits 31 and 44, respectively were marked for identification.)

THE COURT: All right.

MR. DE MARCO: Excuse me, which is 31 and which

THE COURT: Loud enouh for the record, Mr. Sirignano.

MR. SIRIGNANO: 31 are the replies from the dealers and 44 is the manufacturers.

THE COURT: All right, where are we now?

Q Will you examine Plaint iff's Exhibits marked for identification 31 and 44.

A Yes, I have examined them.

H. William	MR. JINKINSON: What they purport to be.
Si 4	A They are responses from the dealers and the mail
5 6	
6	order houses.
	THE COURT: 31, responses of dealers and mail
, 7	
. 8	order houses?
. 1997	THE WITNESS: Yes, but we included them in one
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	category.
. 10	THE COURT: They are all in Exhibit 31?
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12	THE WITNESS: Yes.
-	Q And 44?
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14	A Manufacturers.
	MR. SIRIGNANO: I would like to have marked
15	as Plaintiff's Exhibits for identification 32, 33 and 34.
16 FXX	(Plaintiff's Exhibits 32, 33 and 34, respectively
	were marked for identification.)
18	THE COURT: All right.
19	THE WITNESS: I have examined them.
20	Q Will you tell me what Plaintiff's Exhibit 32
21	for identification is?
22	A 1968 sales of dental products by dental dealers
. 23	to dentists, dental laboratories, institutions and government
24	agencies in metropolitan New York.
25	On what basis was this char t prepared?
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die wie	

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Ritchin-direct

Tell me fir st what Exhibit 31

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1	The state of the s	293. (A
	desb-13	Ritchin-direct
2	A	Based upon the survey returns.
3.	the state of the state of	
4	Q	What part did you have in its preparation?
5	Α.	I edited the returns. I was responsible for
6	the underly	ing data.
	Ω.	What part did you have in the actual making of
7	the particu	lar chart?
8	A	Well, I said I was responsible for the underlyin
9	data, and t	hat is as far as my responsibility went.
10		Did you examine that chart after it tell
11	Q	
12	me who actu	ally physically prepared the chart.
13	Α	Wall, the staff prepared it, statistical clerks
14	were respon	sible for it.
	2	And following its preparation what did you do?
15	Α	I made sure they were accurate.
16	0	What is Plaintiff's Exhibit 33 marked for ident:
17		
18	fication?	
19	: A	It is the same thing for 1969.
	Q	And Plaintiff's Exhibit 34 marked for identi-
20	fication?	
21		Same thing for 1970.
22	A	
23		THE COURT: Doctor, these three exhibits, what
	are they?	
24		THE WITNESS: It is the distribution for sales
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	by	

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THE COURT: No, the numbers.

THE WITNESS: 32, 33, 34.

THE COURT: Now 32, 33 and 34 I take it are a statistical result from the answers in Exhibits 31 and 45?

THE WITNESS: No. This is not included manufacturers.

THE COURT: It is just 31?

THE WITNESS: That is right.

THE COURT: But the backup material, the underlying or the basic data reflected in these three exhibits comes from the raw material in 31?

THE WITNESS: That is correct, your Ronor.

T HE COURT: All right, thank you.

MR. SIRIGNANO: I would like to have marked for identification as Plaintiff's Exhibits 35, 36 and 37 these three charts.

(Plaintiff's Exhibits 35, 36 and 37, respectively marked for identification)

THE COURT: All right.

Q Since I am not sure it is on the record, Doctor, did you take any part in the preparation of the plaintiff's exhibit marked for identification 33 and 34?

A Yes, I was responsible for the underlying data.

I made sure they were accurate.

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1	desb-15 Ritchin-direct .295
2	Q And now tell me what these exhibits, 35, 36 and
3	37, are.
4	A These are sale of dental sundries to dentists,
5	dental laboratories, agencies and institutions for
6	metropolitan New York for, 69 and 70.
7	Q Were these prepared under your supervision?
8	A Yes.
9	Q Do these reflect data contained in Plaintiff's
10	Exhibits 31?
11 .	A That is correct.
12	MR. SIRIGNANO: I would like to have marked
13	for identification Plaintiff's Exhibitw 38, 39 and 40.
14	(Plaintiff's Exhibits 38, 39 and 40 respectively
15	were marked for identification.)
16	What are plaint iff's Exhibits 39, 40 and 41
17	for identification?
18	THE COURT: I think it is 38, 39 and 40.
19	MR. SIRIGNANO: I am sorry, your Honor.

This is the same kind of a chart of '68,'69 and '70, but we now substitute sales and service of dental equipment.

Were these charts prepared under your supervision?

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Q Do they reflect the underlying data contained in Plaintiff's Exhibit 31 marked for identification?

A That's correct.

MR. SIRIGNANO: I would like to have this marked as Exhibit 41 for identification.

(Plaintiff's Exhibit 41 is marked for identification.)

THE WITNESS: I have examined it.

- Q What is Plaintiff's Exhibit 41 for identification?
- A Well, the title is "Analysis of Geographic Area Served by Metropolitan New York Dental Dealers, with 1968 sales in excess of one million dollars."
 - Q Was this chart prepared under your supervision?
 - A It was.
- Q Does it reflect underlying data contained in Plaintiff's Exhibit 31 for identification?
 - A It doer
- Q Doctor, exhibits marked for identification 32 through 41 each hav references on them to defendant Health Co. and the companies whose acquisition are the subject matter of this action. Were any survey forms sent to them?
 - A No, there was not.
 - Q Do you know from where the entries on Exhibits

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32 to 41 involving the defendant came from?

It is my understanding it came from stipulation with the defendants or the defendants gave it to the staff.

Thank you.

MR. SIRIGNANO: I would like to have marked for identification Plaintiff's Exhibits 42 and 43.

(Plaintiff's Exhibits 42 and 43 are marked for identification.)

THE COURT: All right.

Doctor, was Plaintiff's Exhibit 42 marked for identification prepared under your supervision?

Yes, it was.

Does it reflect underlying data shown in Plaintiff's Exhibit 31 marked for identification?

It does.

I would like you to examine Plaintiff's Exhibit 43 marked for identification.

Yes. A

What is that document?

It is compilation of the totals.

Was this document prepared under your supervision? Q

It was.

Does this document rellect or based on figures contained in Plaintiff's Exhibit 32 through 41 for identi-

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fication, do they not?

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A Yes.

Well, it doesn't include 41. 41 is the distribution of sales by county.

Q 32 through 40.

A Yes, it does.

Q I am sorry, 31 through 40.

A Yes, it does.

MR. SIRIGNANO: I would like to have marked for identification as Plaintiff's Exhibit 45 this document.

(Plaintiff's Exhibit 45 was marked

for identification.)

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What is Plaintiff's marked for identification 45.

A Well, it's a compilation of sales in '68, '69
and '70 to ultimate consumers in the Metropolitan New York
of companies identified by Healthco as manufacturers,
employing direct sales representatives in the New York
area,

Answer to interrogatory 25.3, and by Albert Singer, of Healthco in the course of deposition testimony.

- Was this prepared under your supervision?
- A Yes, it was.
- Q Does this reflect the underlying data to be found in Plaintiff's marked for-identification 44?

A Yes, it does.

MR. SIRIGNANO: I would like to move to have introduced in evidence the following exhibits. I would ask Mr. Lubinski to read the list.

MR. LUBINSKI: 26, 28, 30, and 31 through 45.

THE COURT: Do you have them assembled? I would like to take a look at them.

Now, there were some earlier exhibits for identification, completed questionnaires identified by some of the witnesses.

MP. SIRIGNANO: Yes, your Honor.

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THE COURT: And not yet offered in evidence.

Is it the government's intention to offer them in evidence at some time?

MR. SIRIGNANO: As a matter of fact, they are contained --

THE COURT: -- within 31 through 47?

MR. SIRIGNANO: Just 31.

THE COURT: In 31?

MR. SIRIGNANO: Yes, your Honor.

THE COURT: I guess I have been mixing up 47. 44 is the manufacturers?

MR. JINKINSON: Yes.

THE COURT: I guess I have been mixing it up.

So the exhibits for identification of some companies as to which individuals have here testified are contained in Exhibit 31 and need not be offered separately?

MR. SIRIGNANO: Yes, but if your Honor feels
just as a matter of convenience that it would be
convenient to have them, we would introduce them at this
time.

THE COURT: No. Then I would suppose that these are the exhibits that could properly be characterized as the survey exhibits?

MR. SIRIGNANO: Yes, your Honor.

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THE COURT: And it is one of the important arguments of the defendant, and I assume that the defendant thinks it important, that these survey exhibits should be excluded. Is there very much else to cover with this witness?

> I have nothing further. MR. SIRIGNANO:

THE COURT: Mr. Jinkinson, I will hear your objection. Don't argue, but I will give you a chance now to make it.

MR. JINKINSON: Your Honor, as to the proffered exhibits we object upon the ground that they are based entirely upon hearsay. There is no underlying data submitted to the defendants for the purpose of inspection to ascertain the correctness of the survey. The survey was made of only a part of the market, selected dealers or selected sellers in the market. They did not cover all companies offering dental products to buyers in the market, and, therefore, they are improper and should be excluded.

THE COURT: I'm going to overrule the objection and admit them in evidence and treat your objection as a motion to strike. You asked for a woir dire. Mr. Sirignano is finished with his direct. There is no point in a woir dire now. But we can make whatever record you would like to make on cross examination.

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the documents have been admitted as a motion to strike, and I will pass on the motion to strike at some appropriate time. We can talk about that later. I am not indicating any acceptance of the theory of the government at this time. I am just interested in understanding what the facts are and making a record for both sides, so that I can try as intelligently as I can at some time to pass on it.

MR. JINKINSON: I understand, your Honor.

THE COURT: So, Mr. Clerk, with my statement having been made a matter of record, would you be good enough to mark in evidence Exhibits 26, 28 and Exhibits 30 through 45.

(Government's Exhibits 26, 28 and 30 through 45, inclusive, received in evidence.)

THE COURT: I deem a motion to strike those exhibits to be now pending, and I take that motion under advisement. We will discuss the disposition at some later time.

Mr. Sirignano, I take it that is your direct?

MR. SIRIGNANO: That is my direct. With respect
to the motion to strike, your Honor, we have prepared a

memorandum on the question of the admissibility of this

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type of evidence which we are prepared to file with your Honor and with the defendant at this time.

THE COURT: I think it would be helpful if you can give two copies of it and give a copy to the defendant, and we will talk about this when the record is closed.

The defendant may cross examine.

MR. JINKINSON: May I begin and then ask for a short recess?

THE COURT: I thought we would take it whenever counsel would like, but I felt about 3:30.

MR. JINKINSON: Yes, that is fine.

CROSS EXAMINATION

BY MR. JINKINSON:

Q Dr. Ritchin, you say that you supervised the drafting of Exhibits 26, 30 and 28? I believe those are the three forms that you use in your survey?

A I did.

Q Now, when you say you supervised, do you mean that you actually drafted them or you approved their form after they had been drafted by someone in the department?

A No, it was a collective effort, but I had the final say.

I want to know whether you physically drafted these

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MR. JINKINSON: Please furnish the witness with a copy of 26.

Q Attached thereso, Exhibit 26, is a letter, and while the copy before me is not signed, it is typewritten, it is by John Sirignano, Jr.

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Did he draft this letter or did you draft it?

- A He drafted the letter.
- Was it shown to you before it was sent out?
- A Yes.

O Now, directing your attention to paragraph 2
of the attachment to Exhibit 26, it reads as follows,
"In any instance in which exact dollar figures called for in the reply form are not available, approximations so stated would be acceptable."

Is that right?

- A That is correct.
- Q Does that meet with your approval?
- A Yes.
- Q Is that the general practice of yours in conducting a survey that you will take approximations?
- A If it is extremely difficult or impossible to get exact dollar figures, we will take the next best figure, which is the approximation.
- Q It does not say, does it, in the attached letter if there is difficulty in getting any figures you will accept the next best?
 - A No.
- Q It just merely says, "In any instance in which exact dollar figures are not available, approximations

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Yes.

Reading each of these letters, the qualification place in the latter attached to Exhibit 26 does not appear in either of those letters, does it, that is to say, that if you have not got the figures, send in an approximation? Do you note that in either one of the letters attached to 28 and 30?

That is right.

Why would you treat the dental dealers Q different than you do the manufacturers or the alleged mail order people?

Well, I think the rationale was at the time --I am re-constructing what my thoughts were at the time-the fact that a dealer was a much smaller company, and,

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therefore, the probability of his having exact figures were less probable than the manufacturer or a mail order house.

- Then you were dealing in probabilities and possibilities, rather than a search for the truth?
 - No, that is not true.

MR. SIRIGNANO: I object, your Honor.

THE COURT: Yes, I think that is argumentative. I will sustain the objection.

Your answer.

THE COURT: No, I sustained the objection.

I disagree with you.

THE COURT: You can make that argument to me later, but I think as a question it is too argumentative in form.

- Now, who is Mrs. Joan M. Simon?
- She was a member of the staff; she was an attorney.
- Who was Mr. Melvin Lublinski?
- He is sitting at the counsel table.
- Now, you were conducting the survey, but in every instance you didn't ask any of the firms to call you if they found difficulty with the form.
 - That is correct.
- You referred them to the attorneys in the office, not you, although you were responsible for supervising it?

THE COURT: Overruled.

A I conducted the survey.

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- Q Just answer my question.
- A I was not interested.

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Q Isn't that a fair way to determine whether the results of the situation in the market, whether or not those in the market, their share of the market declined and the acquiring company increased substantially.

MR. SIRIGNANO: I object.

THE COURT: I will permit it. It is argumentative,
I agree.

A This survey was not conducted by me as an economist to determine the structure of the market before and after; it was conducted within the context of the complaint and the hypothesis as stated in the complaint; it was stated to verify the hypothesis, and the hypothesis was stated in the complaint, and that is all I followed.

THE COURT: Excuse me. When was this survey conducted?

THE WITNESS: The survey was conducted in '71 and the manufacturers was in '72.

THE COURT: Well, if you conducted it in
'71 you could not very well have found out the figures for
'72, could you?

THE WITNESS: I am sorry. The date is wrong, sir.

MR. SIRIGNANO: Yes, it is correct.

THE WITNESS: Yes, '71 and '72.

THE COURT: What time in '71?

1	RECUIENT CLOSE
2	THE WITNESS: We sent out the survey in January
. 3	of '71.
4	THE COURT: Well, you couldn't get figures for
5	'71, or '72, could you, at that point?
6	THE WITNESS: That is right.
7	Q You could make a new survey?
8	THE WITNESS: We could.
9	Q The same survey could have been made in early '73,
10	couldn't it?
11	A It could have been made.
12	Q But you didn't make it?
13	A That is correct.
14	Q Did you make the survey before or after the
15	complaint was filed?
16	THE COURT: It was after. The suit was started
17	in 1970.
18	MR. JINKINSON: Yes.
19	THE COURT: Obviously, it was made afterwards.
20	Q Why didn't you make a survey to determine the
21	effect of the acquisition in the market prior to the
22	time you filed your complaint?
23	A I can't answer that.
24	Q You didn't have any interest in doing it?
	A I was not assigned to do the work.

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You say you used Exhibit 47 in conducting your Is that right? survey?

Yes.

Now, this is a membership list of what? Q Dental Dealers in the United States of America?

American Dental Trade Association.

And it only purports to list the members of the association?

Right.

It does not list those who do not belong to the association?

That is correct.

Do you know whether all sellers of dental products in the United States belong to that association?

I don't think they do. A

Were you attempting to find all dental dealers?

As far as possible.

But, nevertheless, you used only a list which shows a partial number?

That was not my answer. I said that this . was one of the means used. There were other means used.

What were the other means?

We used classified telephone directories and we used extensive interviews with members in the industry and

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also interrogatories with the defendants.

- How many dental dealers did you get out of the classified telephone directory?
 - I can't recall.
 - Did you get any?
- I just don't I think so. I think we got a few. I know we used them. We used them in this way. recall. We used the classified telephone directory in the interviews with dental dealers and showed them the classified directory and asked them to identify anybody in the classified directory that they thought sold in this market.
 - Who did you ask to do that?
 - Dental dealers.
 - Like whom?
 - I personally didn't do it.
 - Who on your staff did it?
 - I just don't recall.
 - Do you know who they called?
 - No. I don't.

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Do you know how many names they got by that

- A I don't know.
- Q Do you know whether they got any?
- A Yes, I think they did.
- Q Now, you sent an interrogatory to the defendants asking them to assist you, is that right?
 - A That's correct.
- Were you under the impression that the defendants were under some duty to assist you in making some survey?
- A I would have liked for them to respond. I don't know whether they had a duty or not. That is a legal problem.

MR. SIRIGNANO: I object to this question, your

that would be the proper subject of an interrogatory in any event. I don't see it makes much difference.

Q Where did you get the impression that the defendants knew all the sellers in the market?

A In my experience at it. I have had a lot of experience investigating industries. Competitors know who their competitors are.

Ritchin-cross desb-2 Investigating industries, how much experience have you had in making surveys in this area? Quite a few. Bow many have you made? I haven't counted them. How many have you made that have been offered in court? A None. This is the first one you have made that has been offered in court? That has been offeredin court, yes. Now, directing your attention to Exhibit 26,

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the request contained therein asks the company or the dental dealer to whom it was addressed to give you a percentage of certain sales made of certain equipment. Did you make any effort to ascertain whether or not any dental company kept their records, the basis in such classification as is contained in the first paragraph of Exhibit 26?

Well, I read the lit erature, some of the literature in the field and I notice -- I noticed that the American Dental Association conducts periodic statistical surveys. In fact, there is a quarterly sales trend which they put out. They break down their statistical survey by these categories.

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THE COURT: American Dental Association or American Dentral Trade Association?

THE WITNESS: American Dental Trade Association.

Therefore, I assume if the members of the trade association are asked to answer in that way, that their information is broken down that way.

Q You assume then. If they were not a member of the association they wouldn't have it in that manner, is that right?

A They may not.

Q But you didn't ask any of the dental dealers whether or not they kept their records in that manner, did you?

A I personally did not.

Q Do you know of anyone on your staff that did?

A My staff informed me that the answer to that question would not pose any prob lems. In their interviews they determined that.

Q Well, did it subsequently pose any problem with anybody?

A A breakdown by this category?

Q Yes.

A I don't recall.

Q Well, the inquiries from anybody were not

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directed to you, was it? Did your staff or any of the lawyers say they had messages from any people asking you to explain Paragraph 1?

- A No, nobody so informed me.
- Q How about Paragraph 37.
- A May I further answer on Number 1?
- Q If you have anything to add, add it.
- A As I understand it, the defendants admitted that in the complaint, the breakdown.
 - Q What is that?
- A In other words, they offered no objections to this particular product groupings in the complaint. They offered no -- they admitted it in answer to the complaint.
 - Q That what?
- A Of the product groupings, that these are the way the products are grouped in the industry.
- Q Well, I would have to check that, Doctor, and my question wasn't what was admitted, I wanted to know . what any of the people answering this complaint had made to you.
 - A No, no.

THE COURT: Answering the complaint or answering the questionnaire?

MR. JINKINSON: Answering the questionnaire, your

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4560

Honor.

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A It wasn't brought to my attention.

Q Going to Paragraph 3 you ask for sales according to classifications, did you not?

A Yes.

Q And again going back to the letter, people gave approximations, didn't they, if they didn't have the exact amounts?

A That is correct.

Now, did you have any inquiries from anyone as to difficulty in making the breakdown in regard to the classifications as contained in Paragraph 3 of Exhibit 26, do you know whether you did or not?

A I think there was one response which showed some difficulty.

Q And do you remember who that was?

A I think it was M & M.

Q M & M?

A Yes.

Q You don't know of any communication from any of these respondents, as I will call them, with any of the attorneys in the Division regarding the difficult y in filling out this form?

A · No.

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Now, you didn't send or suggest to the attorneys
that they send any inquiries under any par ticular phaze
of the Civil Rules of rocedure to any of these respondents
for them to set forth their correct sales?

MR. SIRIGNANO: Objection, your Honor.

THE COURT: May I have the question?

(Question read.)

THE COURT: Yes, I think I will sustain the objection as to form. Frankly I don't quite follow it.

MR. JINKINSON: They didn't try to get in any of the records. They didn't get at any records of these respondents. I think under the rules, as we pointed out in our brief, requests of admissions or —

THE COURT: I will take it as established that
the Government did exactly what the doctor testified to and
nothing more. And he didn't testify that they got any
backup records. They got these answers to the questionnaire
and they stand or fall on those. I don't really think -Mr. Sirignano, isn't that about the size of it?

MR. SIRIGNANO: Yes, your Honor.

THE COURT: I don't think we have to crossexamine him about that. I will take i as established. He did just what he said he did and nothing more.

MR. JINKINSON: All right.

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MR. JINKINSON: Will you give the witness Exhibit 31, please.

Q Looking at the fir st entry on Exhibit 31, Doctor, so far as you are concerned the information contained therein is hearsay, is that right?

MR. SIRIGNANO: Objection, your Honor.

THE COURT: Yes, sustained.

You can make all these arguments to me but we don't need to ask them of the witness.

MR. JINKINSON: May we have a little recess,

THE COURT: Yes, we will take a few minutes.

(Recess.)

THE COURT: All right, gentlemen.

MR. JINKINSON: Your Honor, I at this time move that the plaintiff furnish the original responses received. These exhibits, particularly Exhibit 31, contain photostatic copies. Now, my reason for that is this: I have not seen them but my colleagues have seen those original responses and they contain erasures and other things which appear on the originals, but do not appear on the photostats.

THE COURT: That is a reasonable request. The Government will furnish them.

MR. SIRIGNANO: I would like to comment on the

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implied -

THE COURT: No implication. It goes in one ear and out the other. It is not an unreasonable request.

MR. SIRIGNANO: We will comply, your Honor.

MR. JINKINSON: Do you have them here?

MR. SIRIGNANO: We have them here, but not bound

THE COURT: Perhaps you can produce them here and counsel can look at them.

MR. JINKINSON: Give them to Mr. DeMarco, please.

Q Doctor, I will continue with your examination.
What is your experience in the dental field, if any?

A None at all.

None. Now, let me ask you this question. Are there ways of determining the number of sellers in the geographical area of New York, the geographical area alleged in the complaint and the amount of sales made by those sellers other than the survey that you made?

THE COURT: You mean sellers of dental products?

MR. JINKINSON: Yes.

A I don't know of anyother way.

MR. JINKINSON: Let me have this marked as Defendant's Exhibit A.

(Defendant's Exhibit A was marked for identification.)

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desb-9 Ritchin-cross I hand you an exhibit marked for identification as Defendant's Exhibit A, which purports to be a page from the 1967 census of business by the United States Department of Commerce. Have you ever seen that? It is attached as Exhibit 5 to our brief. If your Honor wants to look at it, you will find it in our brief. Have you ever seen it? 10 Yes, I have. 11 Well, directing your attention to the brackets 12 I have put on there, and they have been put on by me in the 13 right-hand column, I believe, that shows a total of 118 14 sellers, does it not, in the New York market in1967? 15 16 18 . 19.

Well, I haven't gone behind it but usually, if I can talk in general terms, establishments under the census definition is not a seller. Establishments is either a plant or a store in this particular case or a particular unit but it is not a seller. A seller may have a couple of stores,

Defendant's Exhibit A shows and lists precisely the products which the complaint alleges to be the market in this case, does it not: Teeth, dental gold, equipment, chairs, x-rays, et cetera, and sundry merchandise, right?

It appears to.

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And it shows after dental equipment, supplies,

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A That is what it shows.

Q But my question, the original question to you, isn't this one method of determining the number of sellers in the market and their total sales?

A It is not .

118 establishments, right?

Q It is not. Now, are there ways to ascertain the amount of purchases made by purchasers or buyers in this market which you have not done in your survey?

A Anything is conceivable, but I would say if anybody undertook that kind of a job, if he wanted to make a complete census, I suppose the only one who could do it would be the United States Government and it would take quite a bit of time, sending a survey to every possible purchaser. The cost involved would be tremendous. If you wanted to take a sample and do it by the sample method, the margin of error would be quite high.

Q Therefore you are saying, I take it, that it is impossible to do without a lot of money?

A Well, there is another deficiency attached to it.

You just don't know from whom the purchaser buys it.

Q Now, Doctor, reading from the brief filed by the plaintiffin this case on Page 6, last paragraph:

"There are at least 500 manufacturers of dental products,

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the wast majority which rely almost exclusively on dental dealers for the distribution of their products.

MR. SIRIGNANO: Objection, your Honor, on the grounds to ask the witness to simply comment on something from a brief is improper.

MR. JINKINSON: I haven't finished the question.

THE COURT: Well, he is a professional man

and he is here to some extent as an expert. I will allow it.

MR. JINKINSON: The question is, your Honor,

how many of those 500 manufacturers did you attempt to survey
as being a seller in this market?

THE WITNESS: We surveyed 95.

- Q Out of the 5007
- A 95.
- Q 95 out of the 500?

of 500 and I certainly won't force him to answer that question.

I don't think that is right.

MR. JINKINSON: This is a figure the Government put in there, in their brief. It is not my figure.

THE COURT: He doesn't have to accept the Government's figure. You can make the argument perfectly well.

You can argue to me that the figure shows 500 and he says
he surveyed 95, but that is as far as you need to go.

MR. SIRIGNANO: It seems to me we have a question where no foundation has been laid that the figure 500 as it relates in this brief has any relationship to the figure of 95 which has been covered in the survey.

THE COURT: I don't know. We can deal with that later. We don't need to question this witness about it. MR. JINKINSON: I am accepting the statement made by Government counsel in his brief.

THE COURT: Well, does the witness know anything about the 500? We can ask him all about the 500. assumed from his answer that he didn't want to accept any responsibility for it and he didn't know anything about it. Is that right, Doctor?

THE WITNESS: That is right, sir.

THE COURT: Well, that is right.

MR. JINKINSON: The witness is in a peculiar position. They are both working for the same client. They are both employed by the same employer.

THE COURT: It may be. He is a witness now.

- Do you know how many mail order companies there are in the United States which sell dental products within the New York area or the market area defined in the complaint?
 - We surveyed nine.
 - Nine?

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	desb-13 Ritchin-cross
	desb-13 Ritchin-cross 325
2	A Yes.
3	Q Would that be contained in Exhibit 31?
	a would char be contained in Exhibit 317
4	THE COURT: No, I think it is the other exhibit,
5	The other exhibit,
	isn*t it?
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	MR. SIRIGNANO: 31, your Honor. To simplify
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	matters, the mail order sales will be reflected in I believe
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	Imost every one of the exhibits from 31 through 40.
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	THE COURT: But anyway, the answer to of the nine
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	would be contained in Exhibit 31?
1	MD CYDYCHAU
	MR. SIRIGNANO: Yes, your Honor.
2	THE COURT: All right.
3	THE COURTE ALL FIGHE.
•	Q Now, my question was do you know how many there
4	mon, my descript was no log know how many there
1.	are in the United States, mail order houses?
5	and the second s
	A I do not.
6	
4	Q Did you make any effort to determine how many
7	
	there were?
В	
	A I didn't.
9	0 00 000 41404 44 4
	Q Do you think it is proper to identify mail order
0	houses and survey them when making a survey such as this
1	and the survey client when making a survey such as this
•	to determine the market?
2	
	A If you would add on those who sell in the
3	and the state of t
	metropolitan New York area.
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	Q Sell in the metropolitan New York area, yes,

you think you should have gotten them all, yes?

MR. SIRIGNANO: Repeat that question, please.

- Do you think you should have surveyed all of them?
 - Yes.
- you think by surveying the nine you did successful that were selling in the area? MR. SIRIGNANO: What period are we talking

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MR.JINKINSON: 1968 to 1970.

THE COURT: Covered by the survey, '68, '69

and '70.

- All of that was known to be.
- Now; of the dental dealers included in Exhibit 31, which you surveyed how mahy of them made sales of dental products outside of the area?
- There were a number. I don't know how many. But it is contained right in the answers.
 - What?
 - It is contained in the exhibit.
- Did you include the sales in your tabulations or did you exclude them?
 - We excluded them.
- Those sales amounted to approximately \$4,286,000, is that right?

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MR. SIRIGNANO: Objection, your Bonor. No foundation laid for that.

THE COURT: I don't know what that means,
no foundation laid for it. He is asking him about a document
which is in evidence.

MR. SIRIGNANO: There is no document which reflects that figure, your Honor.

THE COURT: Well, the witness can tell us.

MR. JINKINSON: It can be added up very easily.

THE COURT: Start over again. I will overrule

Q Did you add it up?

A No.

Q In any event, you excluded it in your survey?

A Correct.

Q If it should amount to \$4 million, that is a substantial figur e, isn't it?

A It may or may not be.

Q May or may not be substantial?

A It depends on what the total universe figure is.

Q What do you mean by --

THE COURT: Wait, we will never get an orderly

record.

Finish your answer.

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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A It depends what percentage of these sales represent in the individual's total sales. If it is a small amount of the individual's total sales, it is really not that important.

- Q But the fact is you excluded it?
- A That's right.
- Q Now, you talk about a universe. What do you mean by a universe?
 - A Metropolitan New York area.
 - Q What do you mean by that?
- A I so identified them previously as the City of
 New York --

THE COURT: Nassau, Suffolk, Westchester, and eight counties in New Jersey. Is that right?

THE WITNESS: Yes.

- Q When you talk about area, you are not talking about the universe of sales, are you?
 - A I am sorry, I don't understand the question?
- Q A universe in your mind as being a geographical area. Isn't there also a u niverse in sales? When you talk about the universe you are talking about the total sales.
- A Sales of the individual sellers in that market, that is correct.

desb-17	Ritchin-cross 329
o .	But you didn't survey all the manufacturers
available	, you didn't survey all the mail order houses
available	, did you?
A	I dn't know what the word "all" means.
Q	All means all.
A	I think I answered that all that was known to
me.	
Q	All that was known to you. Now, did you send
a question	onnaire, or your survey, whatever you want to call
it, the B	y-Rite Dental Supply Company, New York City?
	Could I check my notes?
0	Yes, certainly.
A	By-Rite, according to my notes, is under Prefe
Q	You sent the questionnaire to Preferred?
A	That's right. Preferred Dental Supply in Brook

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- is under Preferred.
- referred?
- Supply in Brooklyn.

MR. JINKINSON: Let me state for the record, your Honor, that the names I am reading here were identified by the witness Walter to his recollection and being sellers in this market.

MR. SIRIGNANO: What date? I would like to see where in the record Mr. Walter identified any of those names that were asked in terms of 1968 through 1970.

MR. BIANCHI: Let's look at the record for a second.

I believe Mr. Walter was -- when he was asked a series of questions to identify any companies that came in after '68 --

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MR. SIRIGNANO: That is not established as being in business between 1968 and 1970.

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1	mmsg 1 Ritchin-cross -330
The state of the s	图 10 10 10 10 10 10 10 10 10 10 10 10 10
2	Q Well, now, you sent a questionnaire to the
3.	Colwell Company?
是 其实 一起的	A No, I don't have it listed here.
	ao, 1 don c have it listed here.
5	Q Did you said a questionnaire to Darby Dental
6,	Supply Company?
7	A Yes, that strikes a bell.
•	0 What?
1 1 1 2 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1	white the state of
9	A Yes.
MA 45 - 4 - 7	
. 10	Q Did you send a questionnaire to Direct Dental
1	Service Company?
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	A No, I don't have it on my list.
13	Q Did you send a questionnaire to Dental Mart, Inc.?
and the second	Walls of the second of the sec
14	A No, I do not have it on my list.
15	Q Did you send a questionnaire to Dental Film
16	Company of New York?
	Company of New York?
17	A No, I did not.
18	Q Did you send a questionnaire to Dental Wholesalers?
19	A I did not.
20	Q Did you send a questionnaire to Inter-State Drug
	a see you some a questionmente to inter-state brug
21	Exchange?
AND THE STATE OF T	
22	A I think I did, yes, I did.
)	
	Q Is it Drug Exchange?
24	A Yes.
May a	
25	Q Did you send a questionnaire to Nationwide
1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	Dental Supply?
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Carlot Service Property of	FOLEY SQUARE, NEW YORK, N.Y. CO 7-4880

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manag &	RICCHIA-CIOSS
	Yes, I again see Preferred. It is the same
company k	tnown under different names.
0	Did you send a questionnairs to John O. Butler,
Chicago?	Jid you selle a question of the control of the cont
A	No, we did not.
Q	pld you send a questionnaire to Command,
Orlando,	Plorida?
	C-o-m-m-a-n-d?
Q	That is right.
A	No, we did not.
Q	Did you send a questionnaire to Parkell of
Farmingto	on, New York?
A A	We did not.
	MR. SIRIGNANO: Your Honor, may we have that list
marked f	or identification that he is reading from.
	MR. JINKINSON: These are my notes.
	THE COURT: The request is denied.
Q	Did you send a questionnaire to Splint Bar,
East Mea	dow, New York?
A	S-p-1-i-t?

- Q S-p-l-i-n-t Bar?
- A No, I don't have it on my notes.

MR. SIRIGNANO: Your Honor, I would like to place an objection and state the grounds of my objection. I believe

this entire line is irrelevant, absent any proof that any of these companies about which Dr. Ritchin is being questioned where, in fact, in business between 1968 and 1970.

THE COURT: If it turns out that none of them were in business at that time, then we can disregard it. Let's go on.

Q Did you send a questionnaire to Executive

Q Did you send a questionnaire to Executive Cabinet?

- A No, we did not.
- Q Did you send a questionnaire to Orthopantomograph?
- A It begins with an 07
- Q Yes.

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- 15 A No, we did not.
 - Q Did you send a questionnaire to Lincoln Dental in Philadelphia?
 - A We did not.
 - Q Did you send one to Safco Dental, Chicago?
 - A No, we did not.
 - Q Did you send a questionnaire to American
 - A We did not.

Gold?

- Q In Philadelphia?
- A We did not.

Q Did you send a questionnaire to Superb.7

A No, we did not.

Q Did you send one to Kendall Company, Needham, Mass.?

A Justa moment. These are all dealers and mail

Q These are mail order houses, right?

A I just want to be sure. I don't know if I have a list of manufacturers here. It may be a manufacturer, but as far as the list of dealers and mail order houses, it is not on that list.

Q Buffalo Dental, Brooklyn, New York?

A No, we did not.

Q Savecon Dental?

A No, we did not.

Q B. D. Vankleek, Poughkeepsie, a full service dealer?

A No, we don't have it.

Q Moss X-Ray Manufacturing, Chicago?

A No.

Q Sherry Pharmaceutical?

POLEY SQUARE, NEW YORK, N.Y. CO 7450

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A We did not.

Q Wolins, sundas, New York.

Ritchin-cross

A We did not.

Q Blank Drug Company?

A We did not.

MR. JINKINSON: Your Honor, we would like to move that the original returns be admitted in evidence, the original replies to these responses so that the Court can sometime in the future look at them and we may use them for argument.

MR. DE MARCO: Our notion is not to admit them in evidence. We maintain the same objections previously, but as long as your Homorhas ruled on the motion that it is subject to strike, we ask that the originals be made available to the Court so we can argue from them.

THE COURT: The government will keep the originals, just as they have, and they will be available at reasonable times for your use and in argument you can refer to them and you can call my attention to them and I will ask the government to supply me with the originals, if necessary.

MR. SIRIGNANO: I would like to make one comment on this. We shall make them available, certainly. But last Saturday -- I think I would like to have this on the record -- Mr. DeMarco carefully compared every original to every

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photostat in the presence of government counsel, and in no instance that we know of could we find any area where the photostat did not match the originals.

THE COURT: They have something in mind. I have not the slightest idea what it is, but they ought to have the opportunity.

MR. SIRIGNANO: There is a certain implication in their request.

MR. D2 MARCO: None was intended. We would like the Court to have the best evidence.

THE COURT: I am drawing no inferences.

MR. JINKINSON: No further questions.

THE COURT: Any redirect?

MR. SIRIGNANO: No.

THE COURT: You are excused.

(Witness excused.)

MR. SIRIGNANO: Your Honor, we have no further witnesses at this time. The one additional witness which the government intended to call was out of town, and I had expected him back Friday, but we have arranged that the earliest he could be back is on Thursday.

You may also recall that Mr. Jinkinson intends to continue the cross examination of Mr. Guterman on Thursday. That completely finishes the witnesses which the

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THE COURT: All right, mark it as 46E.

(Defendant's Exhibit 46E was marked
for identification.)

THE COURT: Anything else?

MR. LUBLINSKI: No, that completes it, your

Honor.

THE COURT: All right. What next, Mr. Sirignano?

MR. SIRIGNANO: We are prepared to proceed with

Mr. Guterman.

THE COURT: All right, Mr. Clerk, will you get Mr. Guterman.

(Defendant's Exhibits A, B, C, D and E are received in evidence.)

MORTON GUTERMAN resumed.

THE COURT: I believe we have asked Mr. Guterman this morning, Mr.Jinkinson, because you wanted him to produce records.

MR. JINKINSON: That is right, the profit and loss statements for the years '68, '69 and '70.

CROSS-EXAMINATION (continued)

BY MR. JINKINSON:

- You have made a search for them?
- A I have them.
- Q How do you respond? You have them?

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desb-4

A I have them.

MR. JINKINSON: May I have them, your Honor?
THE COURT: Yes.

A What I did was I have the actual records here and made a copy of each profit and loss sheet.

THE COURT: Remember, the reporter has to get this, so speak distinttly.

MR. JINKINSON: The witness has handed me, your Honor, document entitled "Guterman Dental Supply, Inc. report for the fiscal year, February 1, 1968, January 1, '69."

Another report for the fiscal year of the same company, for the year February 1, '69, to January 31, 1970.

Another report antitled "Report for fiscal year of the same company for the year February 1, 1970, to January 31, 1971."

I willhave to take a few minutes to examine these, your Honor.

THE COURT: All right

MR. JINKINSON: But I might --

MR. LUBLINSKI: Your Honor, will we have an opportunity to look at them after counsel has?

THE COURT: Of course, certainly.

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1	desb-5 Guterman-cross	
2	(Pause.)	
3	THE COURT: Now, wait, is this off the record?	
4	MR. JINKINSON: Yes, your Honor.	
5	(Pause.)	
6	MR. LUBLINSKI: Can I see those now, please?	
7	MR. JINKINSON: I thought you had a copy of	
8	them. (handing.)	-
9		
10	(Pause.)	
11	MR. LUBLINSKI: I am satisfied (handing.)	
12	Q Mr. Guterman, you have returned three financial	1
13	statements here. They don't jibe for the calendar years.	1
14	A We were on a fiscal year.	
15	Q Of February 1 to January 31?	1
	A That is correct.	
16	Q And a report which is entitled '68 through Janua	2
17	31, 1969, would be for 1968?	
18	A '68.	
19	THE COURT: One month of 1968 and one month of	
20	1697	
21	THE WITNESS: That is right, your Honor.	
22	MR. LUBLINSKI: May I just have an opportunity	
23.	to finish examining the two other documents?	
24	THE COURT: All gight.	
25	(Pause.)	

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MR. JINKINSON: Thank you, your Honor.

And the report entitled February 1, 1969, to January 31, 1970, would be for the year '69, is that right?

A '69 to 1970 would be the fiscalyear.

THE COURT: Eleven months in 1969 and one month in 1970.

MR. JINKINSON: Right.

Q The report February 1,1970 to January 31, 1971, would be for eleven months in 1970 and one month in 1971?

A Correct.

Q That was the figure you entered under the year 1970 in the questionnaire you returned to the Government?

A Correct.

Now, inthat last year of '70 just referredto, if you will look at Exhibit B — you have a copy in front of you, do you not?

A Yes.

Q You reported an your survey ---

THE COURT: What is Exhibit B?

MR. JINKINSON: Exhibit B attached to the fiscal report and is entitled Exhibit B in the record, your Honor.

THE COURT: It is Exhibit B to the financial

report?

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front of you?

Guterman-cross

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MR. JINKINSON: That is right.

THE COURT: I just want it so that it is not

MR.JINKINSON: That is right, your Honor. It is Exhibit B to the report for the fiscal year, your company, February 31, 1970, to January 31, 1971. Do you have it in

THE WITNESS: Yes.

confused with an Exhibit B in this lawsuit.

Q You reported on your questionnaire total sales of \$1,400,000. Actually your sales were \$1,534,000 and some odd cents, rounded off it would be \$1,534,000, and you understated in your questionnaire approximately \$150,000, didn't you?

- A According to that statement, yes.
- Q All right. Is there anywhere in this report,
 fiscal year '70 to '71, which would -- where you can tell
 the percentages of the various categories asked in the question
 naire, or were those just merely estimates on your part?
 - A No.
 - Q. They were not? They were not estimates?
 - A They were not.
- Q Is there anywhere in this report where you can tell the categories listed in the questionnaire?
 - A Not that I can find when I found those reports.

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2	Q Now, for your 1969 sales you reported \$2,270,000,
3	is that right?
4	A Yes.
5	Which is approximately \$2,000 more than contained
6	in your actual sales, right?
7	A Yes. A little less than \$2000.
8	Q Again looking at the '69 fiscal report you can't
9	tell any category of sales such as requested in questionnaire
10	paragraph 1?
11	A No.
12	Q You would have to go
13	A Not on these copies, right.
14	Q Have youused other records in preparing this
15	report? I mean the questionnaire you returned to the
16	Government?
17	A Yes, I used the work sheet from our bookkeeping
18	office that I assume the accountants used to break them down
19	to these figures.
20	Q Do you have those with you?
21	A Yes.
22	Q May we see them, please?
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	Just Stubied
24	them. And these were the breakdowns through the years and
25	are where he worked out the percentages as you can see them

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Q In other words, you didn't do this but your accountant did?

- A The accountant or our bookkeeper did it
- Q Your bookkeeper did it?
- A Either one. I don't recognize the handwriting in other words.
 - Q You don't recognize the handwriting?
 - A No.
- Q But the pages on the two white sheets of paper are his work product when he was attempting to answer the questionnaire paragraph 1?
- A Correct, yes. Those were taken from the accountant's work sheets directly.
- MR. LUBLINSKI: Mr. Jinkinson, may I see those, please?
 - MR. JINKINSON: Certainly (handing).

(Pause.)

MR. LUBLINSKI: Thank you.

- Q Now, I hand youthis document back, Mr. Guterman.

 Pirst let me ask you are these two white sheets attached

 to the year 1969 applicable only to 69?
- A No, no, no. These would be applicable to the years '68,'69 and '70.

I see.

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In other words, one line across is one year, the other is the other year, and the third line is the third year.

I see. And if you add the totals on the first line, merchandise, \$1,408,000 and add the equipment of 683, add teeth, 108,000, add gold, add repairs, you get your total?

- Then you would get a gross total.
- A gross total?
- Right.
- Such as a --
- No, these are net totals.
- What do you deduct from the gross totals?
- You would deduct any credits that come in, trade discounts, et catera.

I see.

Now, I am assuming those are gross totals. I didn't total them. If you total it against any one of these sheets we can tell if they are net or gross.

MP.JINKINSON: I have no further questions, your Honor.

THE COURT: Any redirect?

MR. LUBLINSKI: Yes, your honor.

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Mr. Guterman, I ake it you have a copy of plaintiff's Exhibit 21 for identification, your survey

response, in front of you?

Yes.

REDIRECT EXAMINATION

BY MR. LUBLINSKI:

Can you explainthe reason for the discrepancy between the figure which appears in the report for the fiscal year beginning February 1, 1970, and ending January 31, 19712

The only way that I can possibly explain it or come to some type of solution on it was I took the work sheet figures, which I clipped to one of those statements, totaled them up for the year 1970 and the one month of '71, and I came to 1,463,000. Now, I don't know why the other figure should be that much higher, when theother figures jibe win the figures I used, because it was from those direct work sheets that we came out with the figures that were answered in this statement.

I take it by work sheet you mean these two pieces of paper that Mr. Jinkinson was showing you before?

The bookkeeper's work sheet. This work sheet, I added these figures across on the bottom line. Let me see if I have them all here. Yes, I do. And I came out

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to 1,463,000. So I can't explain the differential.

Then I went back to the second work sheet that is pinned underneath and it showed that 33,000 came off the tooth volume as trade discount. So that would bring down -- this would be where we would have come to approximately \$1,400,000. If I took the 33 off the 63.

Now, you have stated that in the documents you produced today there is no basis for determining the percentage breakdown of sales by product categories. Is that correct?

- No, that is not correct. In this document --
- I mean in these -- (indicating) --
- No, they were not in there.
- When you operated Guterman Dental did you have other records that would have served as a basis for making such breakdowns?

Yes. We had the accountant's work sheets. other words, as the accountant came in and did his work from month to month he had big folders, those yellow pages of work sheets, and those were broken down into categories.

- Where are those records presently?
- I have no way of knowing where they are. They may possibly be with the trustee, they may have just been in our office when the sheriff put a lock on the door and I

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couldn't get back in and I have no idea where they are.

These particular statements that you have are statements that I had taken home to peruse, and this was where I found them, at home, along with this one (indicating), which is a copy of one of those.

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THE COURT: I will permit it. Overruled.

Primarily, they would sell sundry merchandise items and equipment. In other words, the differential I am trying

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to draw is that the equipment that they sold was not purchased from the factory as a primary source, and I think their biggest reliance of sales was on sundries.

Q How large a stock of sundry items would a non-full line dealer typically stock?

A Well, if we take a non-full line dealer, one whom we would consider competitive, he would stock a considerable stock of sundries, several thousand items, I would say.

Q How would such non-full line dealers solicit sales?

A Some had salesmen; others had, I think it was just a boss, who went out and sold; one other had, I think, two or three men who became the bosses, did some outside selling, but mostly internal, over the phone. So some of them had salesmen and some of them didn't.

Q How did these full line dealers make deliveries of the sundry items they sold?

A Well, they would use United Parcel, Carl's
Delivery Service, which was a small delivery service used
pretty generally in the dental field in the area.

Q What kind of credit terms would such non-full line dealers typically have?

A. Well, originally when a non-full line dealer would

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originate they would try not to have any credit terms, but they had to give credit terms to become competitors.

MR. JINKINSON: I object to this line.

THE COURT: Yes.

Non-full line dealers?

MR. JINKINSON: Non-full line dealers. I don't see how he can have any knowledge of it.

THE COURT: He was in the trade. I will take it for what it is worth.

Q What categories of customers did these non-full line dealers sell to?

A What categories of customers? You mean dentists?

Dentists and laboratories were their prime customers.

Is this the question you are asking me?

Q You have answered it.

You previously stated that when you operated

Guterman Dental you made a preponderance of your sales to

dentists. Would that have been true of most of these

non-full line dealers?

A Yes, the mon-full line dealers who went after dentists as a business, the dentists were a preponderance of their business. There were other non-full line dealer: whom we didn't consider typically competitive with us who sold primarily to other small dealers. Their

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Guterman-redirect

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preponderance of business was to other dealers, but not the initial ones that I was referring to.

Q Were there any such non-full line dealers which specialized to other classes of customers, other than dentists or other small dental dealers?

A Yes, there were other dealers, smaller dealers, who sold that way.

- Q . And to whom did they sell?
- A. They sold primarily to other dealers.
- Q I think you misunderstood my question. I said other than sales to dentists? What classes of customers did Mycomsell to, for example?
 - A Mycom was primarily a laboratory supplier.
- Q And were there other non-full line dealers who sell to laboratories primarily?
 - A Not on the scale that Mycomedid.

THE COURT: What is Mycone?

THE WITNESS: M-y-c-o-n-e -- it's one name.

Q Not on the scale that Mycone sold, but they did sell to laboratories extensively?

A Yes.

MR. LUBLINSKI: No further questions.

THE COURT: Any recross?



RECROSS E AMINATION

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BY MR. JINKINSON:

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Q You said that these non-full line dealers sold to customers in the market through salesmen and by making telephone calls?

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A Yes.

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Q Did they also put out catalogues?

had some catalogues out, one in particular.

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A Well, I was thinking of -- let me go back a moment to the way I answered that other question. Some of the other dealers who sold primarily to smaller dealers also

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Q There were some mail order houses in the area who were not full line who sold directly to dentists,

laboratories on mail order?

A Yes, that is what I was just trying to say.

MR. JINKINSON: I have no further questions.

THE COURT: Anything further, Mr. Lublinski?

MR. LUBLINSKI: No.

THE COURT: Thank you, Mr. Guterman.

Do we need Mr. Guterman's papers anymore?

Perhaps he can get them back?

MR. JINKINSON: No.

THE WITNESS: I would like to have them back.

THE COURT: Then we can give them back to him.